TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 220.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

vs.

THE L. BUCKI & SON LUMBER COMPANY.

ON WRIT AND CROSS-WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI FILED JANUARY 10, 1908.

CROSS-PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 3, 1908.

WRIT OF CERTIORARI AND RETURN FILED FEBRUARY 6, 1908.

(16,866.)

23509

(18,366.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 220.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

vs.

THE L. BUCKI & SON LUMBER COMPANY.

ON WRIT AND CROSS-WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript in case of L. Bucki & Son Lumber Company, plaintiff in error, vs. The Fidelity and Deposit Company of Maryland, No. 925, in United States circuit court of appeals	a	1
Transcript from circuit court of the United States for the southern district of Florida	1	1
Transcript from State court	1	1
Præcipe for summons	1	1
Summons and return	2	2
Præcipe for appearance	3	3
Declaration	3	3
Petition for removal of cause to United States court	15	13
Bond for removal of cause to United States court	16	15
Order for removal of cause to United States court	18	16
Clerk's certificate	18	16
Amendment to declaration	19	16
Motion to strike various allegations from declaration	19	17
Motion to require plaintiff to file bill of particulars	21	18
Order upon demurrer and motion to strike	21	18
Bill of particulars and notice of offer of proof	22	19
Amendment to declaration	24	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 30, 1902.

	Original.	Print
Motion to set aside order striking allegations from declaration	26	23
Amendment to bill of particulars	27	23
Plea of *non damnificatus*	27	24
Joinder of issue upon plea of *non damnificatus*	28	25
Amendment to bill of particulars	28	25
Notice of offer of proof of damages	29	25
Order on motion to restore certain portions of declaration	31	27
Verdict	32	28
Assignment of errors	32	28
Writ of error bond	54	45
Bill of exceptions	55	46
Return of sheriff on writ of attachment	55	46
Return of sheriff on writ of attachment	56	47
Motion to dissolve attachment	57	48
Order dissolving attachment	59	49
Second motion to dissolve attachment	59	50
Order dissolving attachment	61	51
Motion for separate trial of motion to dissolve attachment	61	51
Order granting motion for separate hearing of motion to dissolve attachment, and hearing on merits	64	54
Writ of error	64	54
Writ of error bond	65	55
Judgment of United States circuit court of appeals	66	56
Writ of error	67	56
Writ of error and supersedeas bond	68	57
Judgment, United States circuit court of appeals	70	59
Forthcoming bond	70	60
Forthcoming bond	72	61
Indemnity bond	73	62
Indemnity bond	74	63
Mortgage by Bucki Lumber Co. to Fidelity & Deposit Co. and release thereof	74	63
Testimony of Arthur Meigs for defendant	82	70
D. G. Ambler for plaintiff	83	71
Contract between plaintiff and J. N. C. Stockton	86	73
Testimony of Alfred J. Rothero for defendant	91	77
D. U. Fletcher for defendant	94	80
Thos. V. Cashen for defendant	94	80
M. D. Barber for defendant	94	81
Henry Clark for defendant	95	81
Arthur Meigs for defendant	95	81
Daniel G. Ambler for defendant	95	81
H. S. Mitchell	96	82
Chas. L. Bucki	97	83
Letter, Arthur Meigs to C. L. Bucki	98	84
Testimony of H. W. Simmons for defendant	101	86
J. B. Murphree for defendant	102	87
Arthur Stevens for plaintiff	102	87
Settlements between plaintiff and defendant	103	[illegible]
Testimony of B. H. Barnett for defendant	104	
J. N. C. Stockton for defendant	105	

	Original.	Print
Contract between Ambler Lumber Co. and C. L. Bucki.	105	90
Defendant's motion to withdraw testimony from jury.	112	96
Order of court on above motion	114	98
Opinion of court on said motion	115	98
Plaintiff's motion to discharge jury and continue case.	117	100
Charges requested by plaintiff refused or modified	119	102
Charges given by the court	129	110
Charges requested by plaintiff refused	131	112
Testimony of Jas. T. Glen for plaintiff	133	114
Charge requested by plaintiff refused	134	114
Charge given by the court	134	114
Verdict	135	116
Judge's certificate to bill of exceptions	136	116
Writ of error bond	136	117
Citation	137	117
Certificate of clerk	138	118
Argued and submitted	139	118
Judgment	139	119
Petition for rehearing	141	119
Order denying rehearing	145	122
Opinion of the court	145	122
Dissenting opinion	158	132
Certificate of clerk	171	142
Caption to transcript in case of The Fidelity and Deposit Company of Maryland, plaintiff in error, *vs.* L. Bucki & Son Lumber Co., No. 926, in United States circuit court of appeals	a	143
Transcript from circuit court of the United States for the southern district of Florida	1	143
Transcript of record from State court	1	143
Præcipe for summons	1	143
Summons and return	2	144
Præcipe for appearance	3	145
Declaration	3	145
Petition for removal to United States court	15	155
Bond for removal to United States court	16	157
Order for removal to United States court	18	158
Clerk's certificate	18	158
Amendment to declaration	19	159
Motion to strike certain allegations from declaration and bill of particulars	19	159
Order upon demurrer and motion to strike allegations, &c.	21	161
Bill of particulars	22	161
Amendment of declaration	24	164
Motion to set aside order to strike allegations, &c	26	165
Amendment to bill of particulars	27	166
Plea to first count of declaration	27	166
Plea of *non damnificatus*	28	167
Order sustaining demurrer to amended plea to declaration.	29	168
Joinder of issue upon plea of *non damnificatus*	30	168
Amendment to bill of particulars	30	169
Notice of offer of proof of damages	31	169
Order on motion to restore certain allegations, &c., stricken.	33	171
Verdict	33	171

	Original.	Print
Assignment of errors	34	172
Bill of exceptions	42	179
Traverse of allegations of declaration	43	180
Charges given by the court	54	189
Order of court including testimony in regard to profits.	58	189
Charge requested by defendant refused	58	193
Charge given by the court	60	193
Charges requested by defendant refused	60	194
Indemnity bond	62	195
Indemnity bond	63	196
Forthcoming bond	64	197
Forthcoming bond	65	198
Charges given by the court	68	202
Judge's certificate to bill of exceptions	73	205
Supersedeas bond	73	205
Application for writ of error and allowance of same	75	206
Writ of error	76	207
Citation	77	208
Certificate of clerk	78	209
Argued and submitted	79	209
Judgment	79	209
Stipulation for addition to record	80	210
Judgment in United States circuit court	80	210
Note as to opinion, &c	82	211
Clerk's certificate	83	211
Writ of certiorari	84	211
Return on writ of certiorari	86	212

a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1900, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

L. BUCKI & SON LUMBER COMPANY, Plaintiff in Error,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant in Error.

Be it remembered that heretofore to wit, on the 30th day of March, 1900, a transcript of the record from the circuit court of the United States for the southern district of Florida was filed in the office of the clerk of said United States circuit court of appeals, for the fifth circuit, in the words and figures following, to wit:

1 United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER CO.
versus
FIDELITY AND DEPOSIT CO.

Transcript from State court.

Præcipe for Summons.

In the Circuit Court, Fourth Judicial —, in and for Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Plaintiff,
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation Organized and Existing under the Laws of the State of Maryland, Defendants.

Action on attachment bond; damages, $200,000.

To P. D. Cassidey, clerk of said court:

You will please summons *ad res.* in the above-entitled cause, returnable according to law.

H. BISBEE,
Att'y for Plaintiff.

(Indorsed:) Filed March 25, 1898. P. D. Cassidey, cl'k, by C. W. Frazier, D. C.

2 *Summons ad Respondendum.*

The State of Florida to all and singular the sheriffs of the State of Florida:

You are hereby commanded to summons Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, if *he* be found in your county, to be and appear before the judge of our circuit court for the fourth judicial circuit of the State of Florida, at the clerk's office in Jacksonville, on the first Monday of May, next, at a court to be held on that day, in and for the county of Duval, then and there to answer L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, in an action on attachment bond, damages 200,000 dollars. And have then and there this writ.

Witness P. D. Cassidey, clerk of our said court, and the seal of the said court at the court-house in Jacksonville, county aforesaid, this 25th day of March, A. D. 1898.

P. D. CASSIDEY, *Clerk*,
By C. W. FRAZIER,
Deputy Clerk.

H. BISBEE,
Attorney for Plaintiff.

(*Sheriff's Return Endorsed on said Summons.*)

Received this summons on the 25th day of March, A. D. 1898 and executed the same on the 26th day of March, A. D. 1898, in the county of Duval, Florida, by delivering a true copy thereof to R. Bowen Daniel as the resident general agent of the within-named defendant corporation, to wit: Fidelity and Deposit Company of Maryland—at the same time showing the original and making known the contents thereof. Not being able to find the president or vice-president, or other head of said corporation, or the cashier or treasurer, or secretary or general manager, or any of its directors service was made as above.

N. B. BROWARD,
Sheriff of Duval County, Florida,
By R. H. BISHOP,
Deputy Sheriff.

(Indorsed:) Filed Mar. 30, 1898. P. D. Cassidey, clerk, c't ct.

3 *Præcipe for Appearance.*

Fourth Judicial Circuit of Florida, Circuit Court of Duval County.

L. BUCKI & SON LUMBER COMPANY, a Corpor'n,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corpor'n.

The clerk of the circuit court of Duval county, Florida, will please enter my appearance for the defendant in the above-stated cause.

R. H. LIGGETT,
Att'y for Def't.

(Indorsed:) Filed May 2, 1898. P. D. Cassidey, clerk c't ct.

Declaration.

In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

L. Bucki & Son Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, plaintiff, sues The Fidelity & Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, defendant, for that heretofore, to wit: on the first day of October, 1897, the Atlantic Lumber Company, a corporation organized and existing under the laws of Florida, did institute its suit in the circuit court of Florida, fourth judicial circuit, in and for Duval county, against the plaintiff herein, and then and there, by its agent, Frank H. Elmore, who was then and there a clerk in the employ of the said The Atlantic Lumber Company, make and verify under oath, an affidavit in the words and figures following, to wit:

Fourth Judicial Circuit of Florida, Circuit Court of Duval County.

THE ATLANTIC LUMBER COMPANY, a Corp'n,
vs.
L. BUCKI & SON LUMBER COMPANY, a Corp'n.

4 STATE OF FLORIDA,
Duval County.

Be it remembered, that on this the 1st day of October, 1897, in the ounty of Duval and State of Florida, before the undersigned, per- nally came Frank H. Elmore, who made oath that he is the duly ..norized agent of the Atlantic Lumber Company for the purpose making this affidavit, and that the said The Atlantic Lumber

Company is a corporation existing under the laws of the State of Florida; that the L. Bucki and Son Lumber Company is a corporation existing under the laws of the State of New Jersey, and resides beyond the limits of the State of Florida; that the said L. Bucki and Son Lumber Company is indebted to the said The Atlantic Lumber Company, in the sum of $9,980.80, and that the same is actually due; and that the said L. Bucki and Son Lumber Company owns and possesses a large number of logs and a great quantity of timber and lumber situated at or near its mill site in Duval county, Florida, in the city of Jacksonville, and that the said The Atlantic Lumber Company has a statutory lien upon all of the said logs, timber and lumber, belonging to the said L. Bucki and Son Lumber Company, and has this day commenced a suit in the circuit court of the State of Florida, for the fourth judicial circuit, in and for the county of Duval, for the purpose of enforcing the said lien; and that the said property will be removed beyond the jurisdiction of the circuit court for the fourth judicial circuit of Florida, in and for the said county of Duval; and that the said The Atlantic Lumber Company, has reason to believe that the said logs, timber and lumber are about to be removed from Duval county, Florida, in which they are now situated; and that the said L. Bucki and Son Lumber Company is about to remove its property out of the State of Florida.

FRANK H. ELMORE.

Sworn to and subscribed before me, this 1st day of October, 1897.

P. D. CASSIDEY,
[SEAL.] *Clerk Circuit Court,*
By H. J. CASSIDEY,
Deputy Clerk.

And on the 1st day of October, 1897, the defendant, The Fidelity & Deposit Company of Maryland, for the purpose of securing the plaintiff against all costs and damages which said plaintiff might sustain in consequence of the improper suing out of a writ of attachment in said action against the goods and chattels, lands and tenements of the said plaintiff for the sum mentioned in said affidavit, to wit: nine thousand nine hundred and eighty dollars and eighty cents, by the said The Atlantic Lumber Company, did make
5 and enter into its certain writing obligatory, under the corporate seal of said defendant company, which said writing obligatory was in the words and figures following, to wit:

Know all men by these presents, that Frank H. Elmore, agent for the Atlantic Lumber Company, a corporation under the laws of the State of Florida, as principal and the Fidelity and Deposit Company of Maryland, of Baltimore, a corporation organized and existing under the laws of the State of Maryland, and duly authorized under the laws of the State of Florida to do business in the State of Florida, as surety, are held and firmly bound unto the L. Bucki and Son Lumber Company, a corporation under the laws of the State of New Jersey, in the sum of twenty thousand dollars, for the payment

whereof, well and truly to be made, they do hereby bind themselves, their successors and assigns, jointly and severally.

Signed and sealed on this the 1st day of October, 1897.

The condition of the foregoing obligation is such that whereas the said The Atlantic Lumber Company has this day applied for an attachment against the goods and chattels, land and tenements of the said L. Bucki and Son Lumber Company, for the sum of nine thousand nine hundred and eighty and $\frac{80}{100}$ dollars, now if the said Frank H. Elmore, agent for the Atlantic Lumber Company shall well and truly pay all costs and damages which the said L. Bucki & Son Lumber Company may sustain in consequence of it, the said Atlantic Lumber Company, improperly suing out said attachment, then this obligation shall be null and void, otherwise it shall remain of full force and virtue.

FRANK H. ELMORE, [SEAL.]
Agent for the Atlantic Lumber Co.
FIDELITY & DEPOSIT COMPANY OF MARYLAND.
By D. U. FLETCHER.

Attest: SAM'L J. SLATER,
Agent for the Company.
[CORPORATE SEAL.]

Taken and approved this 1st day of October, 1897.

P. D. CASSIDEY,
Clerk Circuit Court,
By H. J. CASSIDEY, [SEAL.]
Deputy Clerk.

And the said The Atlantic Lumber Company, then and there filed the said affidavit and the said bond or writing obligatory in the circuit court of Duval county, State of Florida; and thereupon did cause or procure a writ of attachment to be issued in behalf of the said The Atlantic Lumber Company, against all of the
6 logs, timber and lumber belonging to the L. Bucki and Son Lumber Company, situated at or near its mill site in Duval county, Florida, in the city of Jacksonville, or so much thereof as could be found, as would satisfy the sum of nine thousand nine hundred and eighty dollars and eighty cents, which said writ of attachment was in the words and figures following, to wit:

The State of Florida to all and singular the sheriffs of the State of Florida:

You are hereby commanded to attach and take into custody all of the logs, timber and lumber belonging to the L. Bucki and Son Lumber Company situated at or near its mill site in Duval county, Florida, in the city of Jacksonville, or so much as can be found as will be sufficient to satisfy the debt or sum demanded to wit: $9,980.80 with costs, in that certain suit pending in the circuit court of the fourth judicial circuit of the State of Florida, in and for

Duval county, wherein The Atlantic Lumber Company, a corporation existing under the laws of the State of Florida, is plaintiff, and L. Bucki & Son Lumber Company, a corporation under the laws of the State of New Jersey, is defendant. And make return of this writ according to law.

Witness the Honorable R. M. Call, judge, as also P. D. Cassidey, clerk, and the seal of said court, at the court-house in Jacksonville, Florida, this 1st day of October, A. D. 1897.

P. D. CASSIDEY, *Clerk*,
[SEAL.] By H. J. CASSIDEY,
Deputy Clerk.

R. H. LIGGETT,
Plaintiff's Attorney.

And the said The Atlantic Lumber Company, then and there improperly and without just cause, caused the sheriff of the said county of Duval to levy the said writ upon the property of the plaintiff of the value of over fifteen thousand dollars, to wit: upon one million two hundred and fifty thousand feet of yellow-pine merchantable lumber then at plaintiff's mill site in the city of Jacksonville, Duval county, Florida, all of which was then and there the property of the plaintiff; and then and there the said The Atlantic Lumber Company caused the said sheriff to take and the said sheriff did take under and by virtue of the said writ, into his, the said sheriff's possession and custody, all of the said lumber, for a long period of time, to wit: for one month.

And the plaintiff declares upon the said bond or writing obligatory of the defendant hereinbefore set forth and shows as a
7 breach of the condition thereof, that the said writ of attachment, mentioned in said bond, and hereinbefore set forth, was improperly sued out by the said The Atlantic Lumber Company, for that the averment in the said affidavit, hereinbefore set forth, that the plaintiff, the defendant in said attachment proceedings, was indebted to the said The Atlantic Lumber Company in the sum of ninety-nine hundred and eighty dollars and eighty cents ($9,980.80) was as plaintiff avers, false and untrue, at the time when made, and the said The Atlantic Lumber Company had no meritorious cause of action therefor, against this plaintiff, the defendant in said attachment proceedings. And the plaintiff avers that the allegations in the said affidavit that the said The Atlantic Lumber Company had a lien on all of the said logs, timber and lumber belonging to the plaintiff mentioned in said attachment affidavit; and that the said property would be removed beyond the jurisdiction of the circuit court for the fourth judicial circuit of Florida in and for the said county of Duval; and that the said The Atlantic Lumber Company, had reason to believe that the said logs, timber and lumber were about to be removed from Duval county, Florida, in which they were then situated and that plaintiff was about to remove its property out of the State of Florida, were, and each and every of such allegations was false and untrue, at the time when made. And this plaintiff avers that on the first of October, A. D. 1897, it was

and for many years prior thereto had been engaged at the said mills and premises in the manufacture of hard-pine lumber and timber, and that it had on the day and year aforesaid, and at all times for several years prior thereto, an officer and agent in its employ and present in the said county of Duval upon whom personal service of any process of a court of law or equity, both mesne and final, could be legally made, which was well known to the Atlantic Lumber Company, on the day and year aforesaid. And the plaintiff avers that it, on, to wit: the first day of October, A. D. 1897, did not reside beyond the limits of the State of Florida within the sense and meaning of the attachment laws of the State of Florida, and that all its business as a manufacturer of lumber aforesaid was done and performed, on the day and year aforesaid, and for many years prior thereto, in the said county of Duval, which was well known to said The Atlantic Lumber Company, on the day and year aforesaid.

And the plaintiff further avers that afterwards, to wit: on the twenty-first day of October, in the year aforesaid, the said suit by the said The Atlantic Lumber Company against the plaintiff, and the said writ of attachment and all proceedings had thereon and therein, were duly removed under the laws of the United
8 States of America, to the circuit court of the United States for the southern district of Florida, and afterwards, to wit: on the 1st day of November, in the year A. D. 1897, on the motion of the plaintiff (the defendant in the said attachment proceedings) in the said last-mentioned court to dissolve the said writ of attachment, on grounds apparent on the face of the record, after argument of counsel for plaintiff and defendant, the court did render its judgment dissolving the said writ of attachment, among other reasons, on the ground that there was not due the said The Atlantic Lumber Company on the said 1st day of October, 1897, said sum of money for which it could maintain a suit on said day against the plaintiff, and ordered that all of the property so as aforesaid levied upon, under and by virtue of the writ to be delivered and returned to the plaintiff, and that the said judgment dissolving the said writ of attachment remains in full force and effect, and is in no way reversed or made void.

And this plaintiff further avers that at the time the said lumber was levied upon as aforesaid, in virtue of the said writ, the plaintiff was engaged in an extensive business of manufacturing hard-pine lumber at and by the use of its mills, dry kilns and mill plant in which said business, the plaintiff manufactured and sold, hard-pine timber and lumber in an amount averaging for each working day in the year, one hundred thousand feet board measure and upwards; and that the said one million two hundred and fifty thousand feet of yellow-pine merchantable lumber, so as aforesaid levied on by virtue of said writ of attachment, was the manufactured product of plaintiff's said mills and mill plant, and was a part of plaintiff's stock in trade; and by reason of said improper issuing and levy of the said writ, the plaintiff's said business was seriously injured for a long period of time, to wit: for six months, and be the reason aforesaid, the plaintiff was interrupted, hindred and delayed and

obstructed in its said business for the period of, to wit: six months and upwards, to the great damage and injury of the plaintiff.

And the plaintiff avers that it has been put by reason of the premises, and the levying of the said writ, to great expense and trouble in and about the procuring the discharge and dissolution of the said writ of attachment, and it has been compelled to pay out large sums of money for traveling expenses, of the officers and agents of plaintiff, to attend court, and in preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out other large sums of money, as costs and attorneys' fees; and has been compelled to incur and has incurred valid
9 obligations to pay other large sums of money, as attorneys' fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the said improper issuing of the said writ, and the levy thereof, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times Union and Citizen, and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers; and has been damaged in other large sums of money by not being able, in consequence of the said writ and levy thereof, to perform contracts and fill orders for manufacture- timber and lumber, which contracts were entered into, and which orders were accepted before the said writ was issued.

And the plaintiff claims twenty thousand dollars damages.

And for that heretofore, to wit: on the first day of October, 1897, the Atlantic Lumber Company, a corporation organized and existing under the laws of Florida, did institute its suit in the circuit court of Florida, fourth judicial circuit, in and for Duval county, against the plaintiff herein, and then and there, by its agent, Frank H. Elmore, who was then and there a clerk in the employ of the said The Atlantic Lumber Company, make and verify under oath, an affidavit in the words and figures following, to wit:

Fourth Judicial Circuit of Florida, Circuit Court of Duval County.

ATLANTIC LUMBER COMPANY, a Corporation,
vs.
L. BUCKI AND SON LUMBER COMPANY, a Corporation.

STATE OF FLORIDA,
Duval County.

Be it remembered, that on this the 1st day of October, 1897, in the county of Duval and State of Florida, before the undersigned, personally came Frank H. Elmore, who made oath before me that he is an agent of the Atlantic Lumber Company, a corporation existing under the laws of the State of Florida, and its authorized agent, for the purpose of making this affidavit; and that the L. Bucki and Son Lumber Company is a corporation under the laws of the State

of New Jersey, and resides beyond the limits of the State of Florida; that the said L. Bucki and Son Lumber Company is indebted to the said The Atlantic Lumber Company in the sum of seventy-five thousand dollars, and that the same is actually due; and that the
10 affiant has reason to believe, that the said L. Bucki and Son Lumber Company is about to remove its property out of the State of Florida; and that it (is) fraudulently disposing of its property; and that it will fraudulently part with its property before judgment can be obtained against it; and that it resides beyond the limits of the State of Florida.

FRANK H. ELMORE.

Sworn to and subscribed before me this 1st day of October, 1897.

P. D. CASSIDEY,

[SEAL.] *Clerk Circuit Court of Duval County, Florida,*

By H. J. CASSIDEY,

Deputy Clerk.

And on the first day of October, 1897, the defendant, The Fidelity & Deposit Company of Maryland, for the purpose of securing the plaintiff against all costs and damages which said plaintiff (defendant in said attachment proceedings) might sustain in consequence of the said The Atlantic Lumber Company's improperly suing out a writ of attachment in said action against the goods and chattels, lands and tenements of the plaintiff (defendants in said attachment proceedings) for the sum of seventy-five thousand dollars, did make and enter into its certain writing obligatory, under the corporate seal or said defendant company, which said writing obligatory was in the words and figures following, to wit:

Know all men by these presents, that Frank H. Elmore, agent for the Atlantic Lumber Company, a corporation under the laws of Florida, as principal, and the Fidelity and Deposit Company of Maryland, of Baltimore, a corporation organized and existing under the laws of the State of Maryland, and duly authorized, under the laws of the State of Florida, to do business in the State of Florida, as surety, are held and firmly bound unto the L. Bucki and Son Lumber Company, a corporation under the laws of the State of New Jersey, in the sum of one hundred and fifty thousand dollars, for the payment whereof, well and truly to be made, they do bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this the 1st day of October, 1897.

The condition of the foregoing obligation is such that whereas the said The Atlantic Lumber Company has this day applied for an attachment against the goods and chattels, lands and tenements of the said L. Bucki and Son Lumber Company for the sum of seventy-five thousand dollars, now if the said Frank H. Elmore, agent for the Atlantic Lumber Company shall well and truly pay all costs and damages which the said L. Bucki and Son Lumber Com-
11 pany may sustain in consequence of it the said The Atlantic Lumber Company, improperly suing out said attachment,

then this obligation shall become null and void, otherwise it shall remain of full force and virtue.

FRANK H. ELMORE, [SEAL.]
Agent for the Atlantic Lumber Co.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By D. U. FLETCHER. [SEAL.]

Attest: SAM'L J. SLATER, JR.,
[SEAL.] *Agent for the Company.*

Taken and approved by me this 1st day of October, 1897.

P. D. CASSIDEY,
Clerk Circuit Court,
By H. J. CASSIDEY,
Deputy Clerk.

And the said The Atlantic Lumber Company, then and there filed the said affidavit and the said bond or writing obligatory in the circuit court of Duval county, State of Florida; and thereupon did cause or procure a writ of attachment to be issued in behalf of the said The Atlantic Lumber Company, against the goods, chattels, lands and tenements of the plaintiff, in and for the sum of seventy-five thousand dollars, which said writ of attachment was in the words and figures following, to wit:

State of Florida to all and singular the sheriffs of the State of Florida:

You are hereby commanded to attach and take into custody so much of the goods and chattels, lands and tenements of L. Bucki and Son Lumber Company, a corporation existing under the laws of the State of New Jersey, as will be sufficient to satisfy the debt or sum demanded, to wit: $75,000.00 with costs, in that certain suit pending in the circuit court of the fourth judicial circuit of the State of Florida, in and for Duval county, wherein The Atlantic Lumber Company, a corporation existing under the laws of the State of Florida, is plaintiff, and L. Bucki and Son Lumber Company, a corporation under the laws of the State of New Jersey, is defendant. And make return of this writ according to law.

Witness the Honorable R. M. Call, judge, as also P. D. Cassidey, clerk, and the seal of said court at the court-house in Jacksonville, Florida, this 1st day of October, A. D. 1897.

[SEAL.] P. D. CASSIDY, *Clerk,*
By H. J. CASSIDEY,
Deputy Clerk.

R. H. LIGGETT,
Plaintiff's Attorney.

12 And the said The Atlantic Lumber Company, then and there improperly, and without just cause, caused the sheriff of the said county of Duval, to levy the said writ upon the property of the plaintiff of the value of over three hundred thousand dollars, to

wit: upon the saw-mill and saw-mill plant, three planing mills, three dry kilns, and the boilers, engines and machinery, tools and implements connected to and with the said mills and dry kilns, and upon the land of the plaintiff upon which the said properties were located, and upon a large amount and number of boilers, engines, machinery, tools and implements in and about and upon the said lands, not in use, and known as duplicate machinery, and upon four million feet of manufactured timber and lumber then in and on and about the land, and upon three million five hundred thousand feet of logs in the boom and pens of the plaintiff, near said mills, all of which was then and there the property of the plaintiff, and then and there the said The Atlantic Lumber Company improperly and without cause, caused the said sheriff under and by virtue of the said writ, to take all of the said lands and properties into his, the said sheriff's possession and custody, and to deprive the plaintiff of the possession and use thereof, for a long period of time, to wit: for six months.

And the plaintiff declares upon the said bond and writing obligatory of the defendant, hereinbefore set forth, and shows as a breach of the condition thereof, that the said writ of attachment mentioned in said bond, and hereinbefore set forth, was improperly sued out by the said The Atlantic Lumber Company, for that the averment in the said affidavit hereinbefore set forth, that the said plaintiff, the defendant in the said attachment proceedings, was indebted to the said The Atlantic Lumber Company in the sum of seventy-five thousand dollars was false and untrue, at the time when made, and was made without just cause. And the plaintiff avers that the allegations in the said affidavit that the affiant had reason to believe that the plaintiff was about to remove its property out of the State of Florida; and that plaintiff was fraudulently disposing of its property; and that plaintiff would fraudulently part with its property before judgment could be obtained against it, were and each and every of such allegations was false and untrue, at the time they were made, and made without just cause. And this plaintiff further avers that on the first day of October, A. D. 1897, it was, and for many years prior thereto had been, engaged at the said mills and premises in the manufacture of hard-pine lumber and timber, and that it had on the day and year aforesaid, and at all times for several years prior thereto, an officer and agent in its employ, and present in the county of Duval,
13 upon whom personal service of any process of a court of law or equity, both mesne and final, could be legally made, which was well known to the said The Atlantic Lumber Company on the day and year aforesaid. And the plaintiff avers that it, on, to wit: the first day of October, A. D. 1897, did not reside beyond the limits of the State of Florida, within the sense and meaning of the attachment laws of the State of Florida, and that all of its business as a manufacturer of lumber aforesaid was done and performed, on the day and year aforesaid, and for many years prior thereto, in the said county of Duval, which was well known to the said The Atlantic Lumber Company on the day and year aforesaid.

And the plaintiff further avers that afterwards, to wit: on the twenty-first day of October, in the year aforesaid, the said suit by

the said The Atlantic Lumber Company against the plaintiff, and the said writ of attachment and all proceedings had thereon and therein, were duly removed under the laws of the United States of America, to the circuit court of the United States for the southern district of Florida, and afterwards, to wit: on the 14th day of February, in the year A. D. 1898, on motion of the plaintiff (the defendant in the said attachment proceedings) in the said last-mentioned court, to dissolve the said writ of attachment on issues of fact as to the debt and sum demanded in the said affidavit, and as to the special causes assigned, for such writ in the said affidavit, and on diverse grounds, among which was the ground that said attachment suit was brought to recover unliquidated damages, to wit: the sum named in the contract sued on as a penalty for the breach thereof, the said court, after a protracted trial and investigation of the said issues, did, upon the testimony adduced by the said The Atlantic Lumber Company, and without any evidence being adduced by the plaintiff, at the said trial on the said motion and issues, render its judgment dissolving the said writ of attachment, and ordered all of the property so, as aforesaid, levied upon, under and by virtue of the said writ, to be delivered and returned to the plaintiff; and the said court then and there found that the plaintiff was not on the first day of October, 1897, indebted to the said The Atlantic Lumber Company in the sum of seventy-five thousand dollars, and the said judgment dissolving the said writ of attachment remains in full force and effect, and is in no way reversed, or made void.

And this plaintiff further avers that at the time the said goods, chattels, lands and tenements and mills were levied upon as aforesaid, in virtue of the said writ, the plaintiff was engaged in an extensive business of manufacturing hard-pine lumber at and by the use of the said mills, goods, chattels, lands and tenements, in
14 which said business the plaintiff manufactured and sold hard-pine lumber in an amount averaging for each working day in the year one hundred thousand feet, board measure, and upwards; and by reason of improper issuing and levy of the said writ the plaintiff's said business was destroyed and ruined for a long period of time, to wit, for six months, and thus the plaintiff's said business was wholly lost to it, and by the reason aforesaid, the plaintiff was interrupted, hindered and delayed and obstructed in its said business for the period of to wit: six months, and upwards, to the great damage and injury of the plaintiff.

And the plaintiff avers that it has been put, by reason of the premises, and the levying of the said writ, to great expense and trouble in and about procuring the discharge and dissolution of the said writ of attachment, and has been compelled to pay out large sums of money for traveling expenses, of the officers and agents of plaintiff to attend court, and in preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out other large sums of money as costs and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorneys' fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution

of the said writ of attachment; and by reason of the improper issuing of the said writ and the levy thereof, as aforesaid, plaintiff was greatly injured in its credit and for a long time was and is unable to carry on its business aforesaid, for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times-Union and Citizen, and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers and has been damaged in other large sums of money, by not being able in consequence of the said writ and levy thereof, to perform contracts, and fill orders for the manufacture of timber and lumber, which contracts were entered into, and which orders were accepted before the said writ was issued, and has been damaged in other large sums of money by being compelled to pay the salaries of its officers and employés when idle, by reason of the said writ and levy, which said employés and officers were necessarily in the employ of plaintiff under contracts for fixed salaries by the year.

And plaintiff claims one hundred and fifty thousand dollars damages.

H. BISBEE,
Attorney for Plaintiff.

(Indorsed:) Filed May 2, 1898. P. D. Cassidey, clerk ct. ct.

15 *Petition for Removal.*

In Circuit Court, Fourth Judicial Circuit, Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Def't.

Petition for removal of cause from circuit court of Duval county, Florida, to the circuit court of the United States for the southern district of Florida, fifth circuit.

Your petitioner, Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, respectfully shows to this honorable court that it is the defendant in this suit, which is of a civil nature and that the matter and amount in dispute in this case exceeds the sum or value of two thousand dollars, exclusive of interest and costs.

2nd. That the controversy herein is between citizens of different States; that the plaintiff, L. Bucki and Son Lumber Company was at the time of the commencement of this suit, and still is, a corporation organized and existing under the laws of the State of New Jersey, and consequently was and is a citizen of the State of New Jersey, having its office and the place of its meetings of its officers, your petitioner is informed and believes at —— in said State, and that your petitioner, Fidelity and Deposit Company of Maryland at the time of the commencement of this suit — and still is a corporation

organized and existing under the laws of the State of Maryland, and therefore is a citizen of the State of Maryland, and of no other State, having its principal office in the city of Baltimore in said State.

3rd. That your petitioner desires to remove this suit before the trial thereof, into the United States circuit court, fifth judicial circuit, in and for the southern district of Florida. And your petitioner further presents that this suit was commenced on the 25th day of March, A. D. 1898, at which time the præcipe for summons was filed herein, and summons was issued returnable to the first Monday, to wit: the 2nd day of May, A. D. 1898, at which time your petitioner caused its appearance to be duly entered by its attorneys herein, and your petitioner is not required by the laws of the State of Florida, or by the rules of this court to plead to the declaration of the plaintiff herein until the first Monday, to wit: the 6th day of June,
16 A. D. 1898, and has made no defense and filed no plea herein.

4th. Your petitioner offers herewith good and sufficient surety for its entry in the circuit court of the United States for the southern district of Florida on or before the said rule day in June, to wit: June 6th, A. D. 1898, a copy of the record in this suit, and for paying all costs which may be awarded by the said circuit court of the United States if said court shall hold that this suit was wrongfully and improperly removed thereto. And your petitioner therefore prays that the said surety and bond may be accepted, that this suit may be removed into the said circuit court of the United States to be held in the southern district of Florida, as aforesaid, pursuant to statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this court.

And your petitioner will ever pray, etc.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
Per H. CRAWFORD BLACK, *Vice-President*,
Petitioner.

H. E. BULE, *Secretary.* [SEAL.]

D. U. FLETCHER AND
R. H. LIGGETT,
Attorneys for Petitioner.

STATE OF MARYLAND, }
City of Baltimore. }

H. Crawford Black makes oath that he is the vice-president of the above-named Fidelity and Deposit Company of Maryland, that the foregoing petition is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

H. CRAWFORD BLACK,
Vice-President.

Subscribed and sworn to before me this 3rd day of May, A. D. 1898.

FRED S. AXTELL,
Notary Public. [SEAL.]

(Indorsed:) Filed May 4th, 1898. R. M. Call, judge. Filed June 4, 1898. P. D. Cassidey, clerk.

Bond for Removal of Cause.

In the Circuit Court, Fourth Judicial Circuit, Duval County, Florida.

17 L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Know all men by these presents, that we, Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, as principal, and R. C. Cooley and R. Bowen Daniel of Duval county, Florida, as sureties, are holden and stand firmly bound unto the L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made unto the L. Bucki and Son Lumber Company, a corporation as aforesaid, its successors and assigns, we bind ourselves, successors, heirs, representatives and assigns jointly and firmly by *there* (these) presents, upon condition, nevertheless, that, whereas the said Fidelity and Deposit Company of Maryland has filed its petition in the circuit court of Duval county, Florida, for the removal of a certain cause therein pending wherein the said L. Bucki and Son Lumber Company is plaintiff, and the said Fidelity & Deposit Company of Maryland is defendant, to the circuit court of the United States, in and for the southern district of Florida; now if the said Fidelity & Deposit Company of Maryland shall enter in the said circuit court of the United States on or before the first Monday of June next, to wit: June 6th, 1898, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void, otherwise shall remain in full force and virtue.

In witness whereof the said Fidelity and Deposit Company, by its proper officer duly authorized and empowered thereto, and R. C. Cooley and R. Bowen Daniel have hereunto set our hands and seals this 18th day of May, A. D. 1898.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By H. CRAWFORD BLACK, *Vice-President.*
H. E. BULE, *Sect.* [SEAL.]
R. C. COOLEY. [SEAL.]
R. BOWEN DANIEL. [SEAL.]

[CORP. SEAL.]

(Indorsed:) Filed May 4, 1898. R. M. Call, judge. Filed June 4, 1898. P. D. Cassidey, clerk.

18 *Order for Removal.*

In the Circuit Court, Fourth Judicial Circuit, Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

The defendant herein having within the time provided by law filed its petition for the removal of this cause to the circuit court of the United States for the southern district of the State of Florida, and having at the time offered its bond with R. C. Cooley and R. Bowen Daniel good and sufficient sureties, pursuant to the statute and conditioned according to law, now, therefore, this court does hereby accept and approve the said bond and accept said petition and it is ordered that this cause be removed for trial to the circuit court of the United States for the southern district of Florida, pursuant to the statutes of the United States, as prayed in and by said petition, and that all other proceedings in this court be stayed.

R. M. CALL, *Judge.*

I, P. D. Cassidey, clerk of the circuit court of the State of Florida, fourth judicial circuit in and for the county of Duval, do hereby certify that the foregoing pages numbered from one to 31 inclusive, constitute a true copy of all the papers, proceedings and records in the case of L. Bucki and Son Lumber Company a corporation organized and existing under the laws of the State of New Jersey, plaintiff, and Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, defendant, as appears upon the files and records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 12 day of November, A. D. 1898.

P. D. CASSIDEY,

[SEAL.] *Clerk of the Circuit Court of the State of Florida, Fourth Judicial Circuit, in and for the County of Duval.*

(Indorsement on back of transcript:) L. 35. No. 116. U. S. court so. dist. Florida. L. Bucki & Son L. Co. *vs.* Fidelity and Deposit Co. Transcript from State court. Filed Nov. 12, 1898. E. O. Locke, clerk.

19 In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff by H. Bisbee, its attorney, and amends each count in the plaintiff's declaration herein, by adding after the

word "issued," in next to the last line of the first count of the declaration the following words, to wit: "And that no part of the said costs and damages have ever been paid to the plaintiff." and the plaintiff amends the second count of the said declaration by adding after the word "year," in the third line from the close of said count, the following words, to wit: "that no part of the said costs and damages have ever been paid to the plaintiff." And to the extent of the said amendments, the plaintiff confesses the demurrer filed to the said declaration.

And the plaintiff further amends the second count of the said declaration, by striking out the following words, to wit: "to wit: the sum named in the contract sued on as penalty for the breach thereof."

H. BISBEE,
Attorney for Plaintiff.

(Indorsed:) Amendment to declaration. Filed Nov. 21st, 1898. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI AND SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Now comes the defendant in the above-stated cause, by its attorneys, and, subject to its demurrer, heretofore filed to the declaration herein which it insists upon as applicable to the declaration as amended, moves the court to strike from the said declaration the allegation hereinafter particular-specified, and, severally, to strike from said declaration, and from each count thereof, each of the said allegations, upon the ground that the said allegations, and each one thereof, are calculated to embarrass and prejudice a fair trial of the cause and are impertinent to the cause of action set forth in the said declaration, and in each count thereof, viz:

1st. All allegations appearing in each count of the declaration relating to the improper levying of the writs of attachment therein referred to.

2nd. All allegations appearing in each count of the said declaration stating that allegations appearing in the plaintiff's affidavits for attachment in the causes herein referred to were false and untrue.

3rd. All allegations to the effect that plaintiff had at all times an agent in Duval county, Florida, upon whom services or process could be made, and that plaintiff was not a non-resident of the State of Florida within the meaning of the attachment law.

4th. All allegations appearing in each count of said declaration relating to the special business in which plaintiff was engaged, and to damage sustained by it in that special business by reason of the issuance and levy of the writs of attachment.

5th. All allegations appearing in each of said counts to the effect that plaintiff was compelled to pay counsel fees, and to incur liabilty for counsel fees, to procure a dissolution of the attachments herein referred to.

6th. All allegations appearing in each of said counts as to injury sustained by plaintiff in its credit, and as to its inability to carry on business for want of credit, by reason of said attachments, and by reason of the publication thereof in the newspaper referred to in said counts.

7th. All allegations in relation to damages sustained by plaintiff in consequence of its liability to perform contracts with third persons, and to fill orders, for manufactured timber and lumber, in consequence of the levy of said writs of attachment.

And the defendant further moves the court to strike from the second count of the said declaration the following allegations therein contained, on the same grounds, viz:

a. The allegation appearing in said count to the effect that plaintiff moved to dissolve the attachment on the ground that it was for unliquidated damages.

b. The allegation to the effect that the attachment was dissolved upon the testimony introduced by the Atlantic Lumber Company, and without any evidence being introduced by the plaintiff.

c. The allegation as to the plaintiff being engaged in business by the use of the property levied upon under the writ of attachment, and that its business was interrupted, hindered, destroyed and ruined by reason of the levy of said writ.

R. H. LIGGETT,
D. U. FLETCHER.

21 And defendant by its attorneys, moves the court to require the plaintiff to file a full, complete and itemized bill of particulars of the items and amount of damages claimed by it, by reason of the facts alleged in the declaration, upon which it seeks to recover damages, for the reason that such bill of particulars is indispensable in order to enable defendant to prepare its defense.

R. R. LIGGETT,
D. U. FLETCHER,
Attorneys for Defendant.

(Indorsed:) Motion to strike various allegations from declaration and for bill of particulars. Filed Dec. 3rd, 1898. E. O. Locke, clerk.

In the United States Circuit Court, Southern District of Florida.

THE L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Action on attachment bond.

This cause coming on to be heard upon the demurrer to the declaration and motion to strike certain portions of the declaration

herein filed, and having been fully heard and considered it is ordered that said demurrer be overruled, and that the words "without just cause" found in the 8th line of the 10th page of the record of the circuit court of the State of Florida, and the words "among other reasons" in the second line of the 13th page in said records, and the whole of the 8th, 9th, 10th and 11th lines of the 14th page and the language beginning with "and attorneys' fees" in the 12th line of said 14th page down to the words "and has been" in the 24th line of said page of the first count of said declaration; and the words beginning with "among which" in the 20th line 22nd page down to and including the words "for the breach thereof" in the 23rd line of the 22nd page and the words beginning with "upon" in the 24th line of said 22nd page and including all of the first line of said 22nd page of the declaration; and the words beginning with "traveling" in the 6th line, 24th page down to and including the first word of the 10th line; and the words beginning with and including "and attorneys' fees" in said 10th line down to the words "has been" in the 23rd line of the 24th page, be and they are hereby ordered stricken from said declaration.

22 And it is further ordered that the plaintiff file herein a bill or particulars showing the contracts made as alleged before said attachment, and the salaries paid to employés as alleged.

Done and ordered this 11th day of February, 1899.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Order upon demurrer and motion to strike certain portions of the declaration. Filed Feb. 11th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant. } Bill of Particulars.

The names and annual salaries of officers and employés of the plaintiff on the first day of October, 1897, are as follows:

Chas. L. Bucki, president	$5,000
J. D. Heagy, mill superintendent	2,500
W. C. Cox, stenographer	720
J. B. Rosser, auditor and book-keeper	1,500
Frank Holsche, office boy	360
George A. Benjamin, planing mill superintendent	1,200
George Martin, engineer	1,080
Four watchmen	1,800
H. Rotschild, book-keeper	1,200
Kurt, office boy, New York	360
L. J. Brush, logging supt. and inspector	900
H. Barker, chief shipping clerk	1,200

C. W. Simmons, secretary and treasurer	3,600
H. W. Simmons, salesman	1,200
Isadore Cohen, salesman	1,800
J. B. Murphree, salesman	1,800

The loss in consequence of the attachment by not being able to fill orders and contracts for lumber existing and pending October 1st, 1897, are as follows:

Contracts with Degnan McLean & Company, of New York city for fine quality of timber and lumber, loss as follows, to wit:

Loss of profits at about $4 per thousand on 483,000 feet, by not being able to deliver the same.

23 Also, loss of about $6,000, that sum being charged to L. Bucki & Son Lumber Company by said Degnan McLean & Company as the difference which that company had to pay for timber and lumber bought at retail in New York city to make up deficiencies in deliveries, and the prices which L. Bucki & Son Lumber Company were to receive for same.

Contract with the Yellow Pine Lumber Company of New York City.

Loss of profits by not delivering 800,000 feet, about $4 per thousand. Also loss of about $10,000 charged L. Bucki & Son Lumber Company, or rather retained by said yellow pine company, as the difference between the contract price of such timber and lumber, and the price which said yellow pine company had to pay at retail in New York, to make up deficiencies in deliveries under the contract.

Contract with Sheppard & Morse Lumber Company of Boston, Mass.

Loss of profits by not delivering about 100,000 feet about $4 per thousand. Also loss of about $600, the difference which said Sheppard & Morse Lumber Company had to pay between the contract price and the market price of lumber to make up deficiencies in deliveries.

Contract with E. B. Hunting & Co., of Baltimore, Md.

Loss by not delivering 280,000 feet, to wit: loss of difference between the contract price and the price said company had to pay in the market to make up deficiencies in deliveries, $1100.

And the defendant is hereby notified that at the trial of the cause the plaintiff will adduce, or offer to adduce, testimony establishing damages by way of demurrage on the schooner R. F. Hartley, $100, caused by the writ of attachment. Also expenses and disbursements made and incurred in preparing for the trial of the motions to dissolve the attachments, to wit: for monies paid and incurred in employing agents to ascertain whether or not it was practicable or possible for the Atlantic Lumber Company to obtain pine timber and pine logs sufficient in quantity, and sufficiently near to Jackson-

ville to enable the said The Atlantic Lumber Company to continue in the performances of their contract for the remaining period of three and one-half years, and to deliver logs of the description called for by the contract into the boom of the L. Bucki & Son Lumber Company at the price of $7.25 or $7.75 per thousand feet, board measure, called for by the contract, and make any profit thereon, such testimony being essential to rebut and overcome evidence adduced by the Atlantic Lumber Company to establish that it
24 was able to continue in the performances of the contract, the amount so expended by L. Bucki & Son Lumber Company, being about $500.

We also give notice that we shall adduce testimony to establish the necessary expenditure of about $150 in correspondence by telegraph and by letter, which correspondence was necessary to prepare to try the motions to dissolve the attachment.

We shall also adduce testimony to prove damages by way of costs in obtaining forthcoming bonds, premiums paid on the forthcoming bonds to the Fidelity & Deposit Company of Maryland, $1,000.

Also premium on insurance policies on mill plant, etc., during the time it was in possession of the sheriff, at the rate of $2,400 per year; taxes during like period, at the rate of about $800 per year; rent paid Joseph D. Mitchell and estate, at the rate of $400 per year, for the use of boom-pen facilities; day and night watchman at the mill at $5 per day.

We shall also offer evidence of damages sustained by attorneys' fees paid and obligation to pay attorneys' fees in obtaining a dissolution of the attachments, and also damages to the credit of the plaintiff by reason of the attachments, and by reason of the fact that the issuing and levy of the attachments *was* published and given wide circulation in the newspaper mentioned in the declaration and other evidence to prove all items of damages stricken from the declaration by the order of the court.

H. BISBEE,
Attorney for Plaintiff.

Service of a copy of the foregoing notice and bill of particulars *excepted* (accepted) this 15th day of February, 1899.

R. H. LIGGETT,
Defendant's Att'y.

(Indorsed:) Bill of particulars and notice of offer of proof. Filed Feb. 16th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Now comes the plaintiff by H. Bisbee, its attorney, and without waiving any objection or exception to the order of the court

25 on motion to strike out certain parts of the declaration in the above-entitled cause, that the words and matters stricken out in pursuance of the said order are as follows, to wit: The words "and without just cause" found in the 8th line of the 10th page of the record of the circuit court of the State of Florida, the same being in the second line of the fourth paragraph of the first count of said declaration. And the words "among other reasons" in the second line of the 13th page in said record, the same being in the fourteenth line of the sixth paragraph of said count. And the words "traveling expenses of the officers and agents of plaintiff, to attend court and preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out large sums of money as" and the words "and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorney's fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the said improper issuing of the said writ, and the levy thereof, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times-Union and Citizen and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers," on the fourteenth page of the said record, and in the eighth paragraph of the first count herein.

And further, the words, "among which was the ground that said attachment suit was brought to recover unliquidated damages, to wit: the sum named in the contract sued on as a penalty for the breach thereof;" and the words "upon the testimony adduced by the said The Atlantic Lumber Company, and without any evidence being adduced by the plaintiff, at the said trial on the said motion and issues;" on the twenty-second and twenty-third pages of the said record, and in the sixth paragraph of the second count of said declaration. And the words "traveling expenses of the officers and agents of plaintiff, to attend court, and in preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out other large sums of money as" and the words "and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorneys' fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the improper issuing of the said

26 writ and the levy thereof, as aforesaid, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business aforesaid, for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times-Union and Citizen and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers;" on the twenty-third and twenty-fourth pages of said record, and in the eighth paragraph of the said second count.

H. BISBEE,
Attorney for Plaintiff.

Received a copy of the foregoing amendment Feb. 15, '99.

R. H. LIGGETT,
Def't- Attorney.

(Indorsed:) Amendment of declaration. Filed Feb. 16th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff, by H. Bisbee, its attorney, and moves to set aside the order heretofore made in this action, striking out from the declaration certain items of damages on the ground that the court erred in granting said order, and the items of damages stricken out are proper for the jury to consider.

H. BISBEE,
Att'y for Plaintiff.

Please take notice that on Wednesday, the eighth day of March, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard, we shall call up the foregoing motion for disposition.

H. BISBEE,
Att'y for Plaintiff.

To Richard H. Liggett, Esq., attorney for defendant.

Service of the foregoing notice accepted this 27th day of February, 1899.

R. H. LIGGETT,
Att'y for Defendant.

(Indorsed:) Motion to set aside order, striking allegation from declaration. Filed Mar. 8th, 1899. E. O. Locke, clerk.

27 In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Please take notice that in the bill of particulars heretofore filed in this cause, in the statement of losses in consequence of the attachment by not being able to fill orders and contracts existing and pending October 1st, 1897, the Degnan-McLean Construction Company was inadvertently and erroneously styled Degnan McLean & Co., and on the twenty-first day of March, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard, I shall apply to the court for leave to amend said bill of particulars by striking therefrom the

words "Deguan-McLean & Company," wherever they occur, and inserting in place thereof the words "Deguan McLean Construction Company."

H. BISBEE,
Attorney for Plaintiff.

I hereby acknowledge service of the foregoing notice and consent that the amendment therein indicated may be made.

R. H. LIGGETT,
Counsel for Defendant.

(Indorsed:) Amendment to bill of particulars. Leave to file granted. James W. Locke, judge. Filed Mar. 23rd, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI AND SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Now comes the defendant in the above-stated cause, The Fidelity and Deposit Company of Maryland, a corporation, by R. H. Liggett and D. U. Fletcher, its attorneys, and for a plea to the declaration of the plaintiff filed herein, and to each count thereof, says that the plaintiff was not damaged as in the said declaration alleged.

R. H. LIGGETT.
D. U. FLETCHER,
Attorneys for Defendant.

28 STATE OF FLORIDA,
Duval County.

Before me, the undersigned, a notary public in and for the State of Florida at large, personally came, within the county of Duval and State of Florida, R. Bowen Daniel, who being by me duly sworn, says that he is the agent of the Fidelity and Deposit Company of Maryland and makes this affidavit in its behalf, and that the foregoing plea is true as he is informed and believes.

R. BOWEN DANIEL.

Sworn to and subscribed before me this 22nd day of April, 1899.

ERNEST C. BIXLER,
[SEAL.] *Notary Public, State at Large.*

(Indorsed:) Plea of *non damnificatus*. Filed Apr. 24th, 1899. E. O. Locke, clerk, by Louis Starke, deputy.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff by H. Bisbee, its attorney, and takes issue upon the plea of defendant filed on the 24th day of April, 1899.

H. BISBEE,
Attorney for Plaintiff.

(Indorsed:) Joinder of issue upon plea of *non damnificatus*. Filed Apr. 28th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff, by H. Bisbee, its attorney, and by way of amendment to its bill of particulars hereinbefore filed, says that its loss upon the contract with E. B. Hunting & Co. of Baltimore,
29 Md., mentioned in said bill of particulars, by not delivering 280,000 feet of lumber, is confined to the loss of profits plaintiff would have made by the performances of said contract by delivering said lumber, amounting to the sum of, to wit: $1,100.

H. BISBEE,
Attorney for Plaintiff.

Received a copy of the foregoing amendment May 3rd, 1899.

R. H. LIGGETT,
Attorney for Defendant.

(Indorsed:) Amendment to bill of particulars. Filed May 3rd, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

The defendant will please take notice that at the trial of this action, we shall offer in evidence, and insist upon proving the following items of damages:

First. All monies necessarily paid out for counsel and attorneys' fees, for services in preparing motions to dissolve the attachments, and in preparing for the trial of the said motions and in the trial of the said motions, which services were caused by and were in conse-

quence of said writs of attachment. Also reasonable compensation for the services of attorneys-at-law employed as above, which have not been paid, which services were caused by and in consequence of said writs of attachment. And we shall offer evidence to prove the value of the services of the said attorneys-at-law in the circuit court of the United States for the southern district of Florida, in the United States circuit court of appeals for the fifth circuit, and in the Supreme Court of the United States, in resisting the attempts and efforts of the Atlantic Lumber Company and the said defendant to arrest and vacate the judgments of the said circuit court dissolving said attachments. The period of the time covered by such services was from the fourth day of October, 1897, to the 8th day of June, 1899.

Second. Plaintiff at the trial of said action will offer evidence to prove, and insist upon proving, that the said writs of attachment were levied upon substantially all the property and assets of
30 the plaintiff, to wit: its mill properties, manufactured timber and lumber, and logs in its boom in Jacksonville, Florida; and that in consequence of the levies of the said writs upon the said properties, the plaintiff's ways and means of continuing in business were taken away from the possession and control of the plaintiff, and the plaintiff was thereby deprived and prevented from carrying on its business of manufacturing and selling hard-pine lumber from the first day of October, 1897, to the 8th day of June, 1899. And we shall offer evidence to prove, and insist upon proving, that in consequence of the levies of said writs of attachment upon all the said properties, it was impossible or impracticable for the plaintiff to obtain the necessary money or credit upon which to do any business for the entire period above mentioned; and to that extent the plaintiff will offer evidence to prove and insist upon proving the injury and damage to its credit as the direct consequence of the levy of the said writs upon the properties aforesaid.

Third. The plaintiff will offer evidence to prove and insist upon proving at the trial of said action, all payments of money actually made, or obligations actually incurred in necessary prevalling (prevailing) expenses of the plaintiff's officers and agents in preparing for the dissolution of the said attachments, and in obtaining a dissolution of the same, and that such expenses and obligations were necessarily incurred as the direct consequence of the levy of the said writs of attachment; and all moneys paid out and obligations incurred in traveling expenses of the attorneys of the plaintiff, and in printing of briefs, and motions, and other papers in accordance with the rules of court, necessary to properly resist the attempts and efforts of the defendant and the Atlantic Lumber Company to reverse the said judgments dissolving the said writs of attachment in the United States circuit court of appeals for the fifth circuit, and the Supreme Court of the United States; and for services of attorneys-at-law rendered in resisting the efforts of the said defendant and the said The Atlantic Lumber Company to have the circuit court of Duval county proceed with the trial of the suits of the Atlantic Lumber Company against the plaintiff in the summer of

1899, and to resist attempts of the defendant and the said The Atlantic Lumber Company to obtain a writ of mandamus from the supreme court of Florida to compel the said circuit court of Duval county to proceed with the trial of the said action, in the summer of 1899, and after the circuit court of appeals aforesaid had affirmed the judgment, and denied the motions of the Atlantic Lumber Company to remand the case for want of jurisdiction, and
31 after the Supreme Court of the United States had denied the application of the said The Atlantic Lumber Company to review the said judgments dissolving the said attachments on writ of certiorari to the said circuit court of appeals.

And you will further take notice that at the hearing of the motion to restore to the declaration certain matters heretofore stricken out, plaintiff will ask the court to order that the said items of damages may be taken and considered as a part of the declaration and each count thereof; and at the same (time) we shall ask for leave to strike from the declaration any definite limit of time during which damage resulted to the plaintiff in consequence of said attachments.

H. BISBEE,
Attorney for Plaintiff.

Service of the foregoing notice accepted this 9th day of January, 1900.

R. H. LIGGETT,
Attorney for Defendant.

(Indorsed:) Notice of offer of proof of damages. Filed Jan. 17th, 1900. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

THE L. BUCKI & SON LUMBER CO.
vs.
THE FIDELITY & DEPOSIT CO. OF MARYLAND.

On declaration.

This cause coming on to be heard upon the motion to restore to the declaration all clauses and paragraphs heretofore stricken out, and having been fully heard and argued by counsel and having been duly considered, it is ordered that such matters be so far restored as to permit testimony to be introduced upon the questions of damages resulting from counsel fees and loss of credit, subject to any subsequent ruling and charge of the court to the jury.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., Jan'y 19th, 1900.

(Indorsed:) Order on motion to restore to the declaration certain clauses and paragraphs. Filed Jan. 25th, 1900. E. O. Locke, clerk, by Louis Starke deputy.

32 United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER CO.
vs.
THE FIDELITY & DEPOSIT CO. OF MARYLAND.

We, the jury, find for the plaintiff and assess its actual damages, exclusive of attorney's fees, at $10,880.00.

And if the court should be of the opinion that, as a matter of law, the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of $7500.00 as a reasonable and just fee for the services proven.

Foreman, WM. MICKLER.

(Indorsed:) "Verdict. Filed Feb. 2nd, 1900." E. O. Locke, clerk.

Assignments of Error.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

First assignment of error. The trial court erred in not giving to the jury the following instruction requested by the plaintiff, to wit:

It is a question of fact for you to determine whether or not if these attachments had not been issued and levied, the plaintiff would have been able to supply its mills with logs after such attachments and to what extent plaintiff would have been able to supply its mill with logs and continued in its business and the amount of profits it would have made in such business in case said attachments had not been issued, provided you believe from the evidence that the direct consequences of such attachment caused the plaintiff to cease continuing in business, and that plaintiff would have and could have continued in business if such attachments had not been issued and levied and continued upon plaintiff's properties.

Upon the following grounds to wit:

First. That the plaintiff had the right to have the material questions of fact stated in said instruction tried by jury.

33 Second. Because said instruction embraced a correct principle of law applicable to the facts and evidence adduced in the case;

And upon other grounds appearing on the face of said requested instruction.

Second assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

The question whether or not the plaintiff was deprived of the means and financial ability to supply itself with logs for its mill and

continue in business after October 1st, 1897, as a direct consequence of the issuing and levying of these attachments is one for the jury to decide.

Whether or not the plaintiff would have been financially able to continue in its usual business after October 1st, 1897, if these attachments had not been levied is a question of fact for the jury to decide upon a consideration of all the evidence in the case.

On the following grounds, to wit:

(1.) On the ground that the said refusal denied to the plaintiff the right of trial by jury of material facts which arose in the case upon evidence applicable thereto.

(2.) On the ground that such instruction embraced correct principles of law;

And on other grounds appearing on the face of said instruction.

Third assignment of error. The court erred in refusing to give the following instruction requested by the plaintiff, to wit:

If you believe from the evidence that the issuing and levying of these writs of attachment injured or impaired the credit or financial standing of the plaintiff as it existed on October 1st, 1897, then the plaintiff is entitled to recover such damages for injury to its credit as you find from the evidence the plaintiff sustained as a direct consequence of the issuing and levying of such writs upon the properties of the plaintiff.

On the following grounds:

(1.) On the ground that the said instruction embraced correct principles of law applicable to the facts of the case in evidence.

(2.) Because such refusal denied to the plaintiff the right to trial by jury of material facts.

(3.) Because injured or impaired credit caused by the writs of attachment is a proper element of damages to be submitted to the jury.

34 Fourth assignment of error. The court erred in refusing to give to the jury the following instruction prayed for by the plaintiff, to wit:

On this subject of the financial condition of the plaintiff with respect to its ability and means of continuing in its business after October 1st, 1897, you must understand that the question for you to determine is not the opinion that any officer of the Atlantic Lumber Company entertained of the financial condition of the plaintiff, nor is it the question of the opinion entertained by any particular bank or other business house as to plaintiff's financial standing, especially so if differences or controversies had arisen between them.

The real question before you is what was the general financial condition of the plaintiff on October 1st, 1897, in respect to its ability and means of continuing in business if these attachments had not been levied, and in reaching a conclusion on this subject it is your duty to give weight to and consider the amount and value of all its property, its mill plant, lumber, timber and logs on hand and good outstanding claims against third parties and the amount of its liabilities due and not due on October 1st.

You should also consider its business connections with those en

gaged in the lumber business, the good will of those engaged in such business, and its facilities for doing business, finding a market for the product of its mills.

You have heard the testimony as to the available round timber of logs on and after October 1st, 1897, and from this evidence, applying your common sense to the subject, you will conclude whether or not it is reasonably probable or certain that the plaintiff with such means as it had at its command would have been able to have supplied its mill with logs during the time attachments rested on plaintiff's property, if these attachments had not been levied. Whether what one has done, another with equal means and skill can do, is not a question of science or law, but one of fact for you to decide.

On the following grounds:

(1.) Because said instruction embraced correct principles of law.

(2.) Because plaintiff had the right to have submitted to the jury the statement of facts presented by the said instruction which questions were material to the plaintiff's case.

And for other reasons appearing on the face of said instruction.

35 Fifth assignment of error. The court erred in refusing to give the following instruction requested by the plaintiff, to wit:

If you believe from the evidence that after allowing all credits due for logs delivered prior to September 15th, 1897, the L. Bucki & Son Lumber Company on September 30th, 1897, did not owe the Atlantic Lumber Company for any logs delivered prior to September 15th, 1897, then the court instructs you that on October 1st, the Atlantic Lumber Company had no cause of action against the L. Bucki & Son Lumber Company on October 1st, 1897, and you will consider this fact in connection with the question of the financial condition and standing of the plaintiff on October 1st, 1897. The plaintiff was not in default for not paying for logs, for the logs delivered after September 14th, 1897, until after midnight of October 1st, 1897.

On the following grounds, to wit:

(1.) On the ground that it presented a correct principle of law applicable to the case, and was material to the plaintiff's case on the question of its financial condition and standing at the time the writs of attachment were issued.

(2.) On the ground that plaintiff had until midnight of October 1st, 1897, to pay any money that fell due on the first day of October.

Sixth assignment of error. The court erred in refusing to give to the jury the following instruction prayed for by the plaintiff, to wit:

If you believe from the evidence that the Atlantic Lumber Company had endorsed and negotiated the draft of August 16, 1897, for $5,340.75, and that on the 1st of October, 1897, the National Bank of Jacksonville was the holder of that draft, then the court instructs you that the Atlantic Lumber Company had no right to demand payment of the amount of that draft to it on October 1st, 1897, and you will also consider that fact in connection with the question of

the financial standing of the plaintiff on October 1st, 1897. The question of the financial standing of the plaintiff with the National Bank of Jacksonville is not to be confounded with or affected by the financial standing of the Atlantic Lumber Company with said bank; and if you believe from the evidence that the plaintiff *bona fide* claim- while said bank held the said draft for $5,340.75, that it, the plaintiff was entitled to a credit on said draft of the proceeds of another draft for $4,000 and that after October 1st, 1897, said bank took and discounted other negotiable paper of the plaintiff,
36 then you should consider these facts in reaching any conclusion as to the financial standing of the plaintiff with the said bank. You will not allow your minds to be influenced on the subject of the financial standing of the plaintiff with the National Bank of Jacksonville, on account of or by reason of any indebtedness by the Atlantic Lumber Company to such bank, for which the plaintiff was in no way liable.

On the grounds following, to wit:

(1.) That it embraced a correct proposition of law.

(2.) That it was essential to enable the jury to correctly apply the evidence mentioned in said requested instruction, and evidence of plaintiff's financial condition;

And on other grounds appearing on the face of said requested instruction.

Seventh assignment of error. The court erred in refusing to give to the jury the following instruction prayed for by the plaintiff, to wit:

The amount of debts which in the business the plaintiff was engaged in it owed and was able to carry and continue in business is not a question of law or science, but is a question of fact, for you, as twelve sensible men to decide. In this matter you will exercise and apply your knowledge of business affairs. You will apply your own judgment, and knowledge as to the amount of debts in comparison to its assets, the plaintiff could probably carry and continue in business.

(1.) On the ground that the plaintiff had the right to have submitted to the jury the question of fact stated in said requested instruction, and said instruction embraced a correct principle of law.

Eighth assignment of error. The court erred in refusing to give to the jury the following instruction prayed for by the plaintiff, to wit:

In determining whether or not it was reasonably probable that the plaintiff would have been able to continue in its business, and in its usual course of business, if these attachments had not been issued, you will take into consideration the amount and value and availability of the plaintiff's assets, its business and trade connections, and the reputation it had of manufacturing and delivering lumber according to its obligations on and prior to October 1st, 1897, and the patronage it had enjoyed. These assets consisted of its mill properties, lumber and timber on its yards and wharves and afloat in transit; and what was due and payable to plaintiff on October

1st, 1897. You will also take into consideration the amount
37 of debts and obligations the plaintiff owed on October 1st, 1897, as well those due and those then to become due.

On the following grounds, to wit:

(1.) On the ground that it was essential to enable the jury to understand how to apply the evidence upon the points embraced in the instruction, and

(2.) Because it embraced a correct proposition and principle of law, and the questions of fact presented were material to plaintiff's case,

And on other grounds appearing on the face of said requested instruction.

Ninth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

If upon all the evidence before you, you believe the plaintiff would have been able if these attachments had not been levied to have supplied and obtained logs for its mills, and continued in its usual business after October 1st, 1897, for the period of time these attachment liens prevented plaintiff from using its mills; then you will award damages for the loss of the use of its properties as you have been before instructed.

On the following grounds, to wit:

(1.) On the ground that it embraced a correct principle of law and a material question of fact which the plaintiff had the right to have submitted to the jury, and

(2.) On the ground that the same was a proper and necessary instruction to enable the jury to correctly apply the evidence before them upon the issue embraced in said instruction.

And on other grounds appearing on the face of said requested instruction.

Tenth assignment of error. The court erred in refusing to give to the jury the following instruction requested by plaintiff, to wit:

If you believe from the evidence that the direct and proximate effect of these attachments was to create a lien upon substantially all the assets and properties of the plaintiff, and that in consequence of such liens upon the said properties, the plaintiff did not own and control the means and did not have the requisite credit to enable it to purchase logs and continue in its usual course of business; and that if such attachments had not been issued, the plaintiff would have been able to continue to purchase a full supply of logs for its mills and continue in the usual course of business, then the court instructs you that the plaintiff is entitled to recover from the
38 defendant such sum of money as will compensate the plaintiff for all losses it sustained by reason of such attachments.

On the grounds following to wit:

(1.) On the ground that it contained a correct principle of law applicable to material facts which the plaintiff had the right to have submitted to the jury, and on the ground that it was the legal right of the plaintiff to recover all damages caused by the direct and proximate effect of the writs of attachment.

Eleventh assignment of error. The court erred in refusing to give to the jury the following instructions, to wit:

If you find from the evidence that the value of the use of the plaintiff's mill properties and business, or its net income, was, for nine months, a given sum of money per month, it does not follow that it is your duty to award the plaintiff such sum of money for each month subsequent to the attachment during the period of time you find plaintiff was deprived of its use of its properties in consequence of such attachments.

The value of the use of plaintiff's properties and his business after October 1st, 1897, may be more or less per month than for the time previous to October 1st, 1897. That question you must determine from the evidence, and arrive at the amount of damages for the loss of the use of plaintiff's properties after considering all the evidence as to the probable condition and value of plaintiff's business, after October 1st, 1897, during the time the plaintiff lost the use of its properties, by reason of such attachments. You will also consider the time that may have been lost by the shutting down of the mill by breakage or otherwise; and if you believe from the evidence that the plaintiff had been able to continue in its business from April, 1893, to October 1st, 1897, with only such temporary interruption as is unavoidably incident to such business, then the presumption is that the plaintiff could have continued to carry on its business in the usual way, after October 1st, 1897, in the absence of evidence to the contrary; and the burden of proof is upon the defendant to establish to your satisfaction that the plaintiff could not have continued in business, even if the attachments had not been issued, and if the evidence does not overcome such presumption, then you will find against the defendant on this branch of the case.

On the following grounds, to wit:

(1.) Because it contained correct principles of law in respect to applying the past profits of the plaintiff's business as a guide to the jury in assessing damages for profits which the plaintiff was prevented from making by the issuing of the writs of attachment, and

39 (2.) Because it presented a correct principle of law respecting the burden of proof upon the issue embraced in said requested instruction;

And upon other grounds appearing on the face of said requested instruction.

Twelfth assignment of error. The court erred in refusing to give to the jury the following instruction requested by plaintiff, to wit:

In determining this question of the probability of plaintiff's being able to continue in business and in its usual course of business on and after October 1st, 1897, so far as any debts it then owed are considered, you will consider all the evidence; the amount and probable value of all its property and assets it then owed, including just claims and demands the plaintiff had against third parties, the condition of its business and of the lumber business at that time, and the probable condition of such business in the then future.

You will also consider the amount of debts plaintiff owed on Oc-

tober 1st, 1897, when they became due and payable, the means it had, and probably would have by the sale of lumber and otherwise to meet such debts; or to obtain an extension of time of payment of such debts; until the plaintiff could pay them from its business.

On the ground that it embraced a correct principle of law upon the measure of damages which the plaintiff was entitled to recover, and the plaintiff had the right to have the question of law embraced in said instruction submitted to the jury.

Thirteenth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

You have heard the evidence in respect to the magnitude and volume of the plaintiff's business for nine months and more prior to the date of the attachments, and in respect to the condition of that business on that day the attachments were levied; and it is your duty to weigh and consider the evidence carefully and deliberately in order to determine the value of the plaintiff's business for those nine months or more.

On the grounds following, to wit:

(1.) Because it contained a correct principle of law as to the measure of plaintiff's damages, and

(2.) Because the plaintiff had the right of having the evidence mentioned in said instruction submitted to the jury.

And on other grounds appearing on the face of said requested instruction.

40 Fourteenth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

If from the evidence you can ascertain with reasonable certainty the net income of the plaintiff's business for the nine months prior to these attachments, then you have a right to consider, and it is your duty to consider the amount of such net income for the said nine months as a basis and evidence upon which to estimate the amount the plaintiff's net income would have been after the time these attachments were levied, if these attachments had not been levied and continued on the plaintiff's property, and the plaintiff had continued in the usual course of business.

On the grounds following, to wit:

(1.) Because it contained a correct principle of law as to the measure of the plaintiff's damages, and

(2.) Because the plaintiff had the right of having the evidence mentioned in said instruction submitted to the jury.

And on other grounds appearing on the face of said requested instruction.

Fifteenth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

The net profits of the plaintiff's business prior to October 1st, 1897, you will consider with all the other evidence in estimating the amount of profits which you believe the plaintiff would have made after October 1st, said year, if these attachments had not been levied

upon the plaintiff's properties, and which you find that the plaintiff was prevented from making by the direct and proximate consequence and effect of issuing and levying these attachments.

And the period of time during which the plaintiff was so prevented from operating its mills and from making profits is for you to decide upon all the evidence of the case, and you are instructed that the testimony as to the profits of the plaintiffs business had not been excluded from your consideration.

On the grounds following, to wit:

(1.) Because it contained a correct principle of law as to the measure of the plaintiff's damages, and

(2.) The facts mentioned in said requested instruction were proper to be submiited to the jury for their consideration in estimating the damages which the plaintiff was entitled to recover.

And on other grounds appearing on the face of said requested instructions.

41 Sixteenth assignment of errors. The court erred in refusing to give to the jury the following instruction requested by the plaintiff to wit:

The court instructs you to award damages to the plaintiff which it sustained by reason or in consequence of the levy of the attachments upon all the timber and lumber and logs attached and to award such damages for the entire period of time the lien of said attachments remained and continued upon the timber and lumber and logs without and deductions from such damages from the fact that forthcoming bonds or indemnity bonds were given by the plaintiff.

If you find from the testimony that *these* (there) is not other satisfactory evidence of the amount of such damages for the time the liens of the attachment remained and continued operative upon such timber and lumber then you may allow the plaintiff eight per cent. interest per annum upon the market value of such timber and lumber from the time of the attachments to the time when the lien of such attachment was released and discharged from this property, or its proceeds in its business, free and clear of any lien of such attachments.

On the grounds following, to wit:

(1.) Because it embraced a correct proposition of law in respect to the measure of damages the plaintiff was entitled to recover, and

(2.) On the ground that the defendant was not entitled to the benefit of any advantage the plaintiff derived by the giving of forthcoming bonds,

(3.) Because the latter part of said instruction embraced a correct principle of law as to the measure of damages, to wit: interest on the value of the property detained from the possession of the plaintiff in consequence of the writs of attachment, without any deduction on account of the giving of any forthcoming or indemnity bonds.

Seventeenth assignment of error. The court erred in giving to the jury the following instruction, to wit:

The court instructs you to award damages to the plaintiff which it sustained by reason of or in consequence of the levy of the attach-

ments upon all the timber and lumber and logs attached and to award such damages for the entire period of time the lien of said attachments remained and continued upon the timber and lumber and logs, considering any deductions from such damages from the fact forthcoming bonds or indemnity bonds were given by the plaintiff.

On the grounds following, to wit:

(1.) On the grounds that the defendant was not entitled to
42 any mitigation of damages by reason of the plaintiff's giving forthcoming or indemnity bonds to the sheriff, and

(2.) Because it was not a duty plaintiff owed to defendant to give such bonds.

Eighteenth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

"If you believe from the evidence that the direct consequence of the said writs of attachment and the levying of the same upon logs and other properties of the plaintiff levied upon would have caused the suspension of the plaintiff's business for the period of time which it would have taken the said saw-mill to have sawn up said logs in the usual course of business, then the plaintiff is entitled to damages for the loss of the use of its said mill, and the suspension of its business during such period of time without any deduction or mitigation of damages from the fact that the plaintiff operated its mill and sawed up such logs with the consent of the sheriff or from the fact that the plaintiff gave an indemnity bond to the sheriff or a forthcoming bond."

On the grounds following, to wit:

(1.) Because it embraced a correct proposition of law upon the measure of damages the plaintiff was entitled to recover upon evidence before the jury; and

(2.) Because the defendant had no right to mitigate the plaintiff's damages sustained in consequence of the attachments by reason of any benefit the plaintiff derived under collateral contracts and arrangements made with the sheriff who served said writs of attachment, or with any other third party to whom the defendant was a stranger.

And on other grounds appearing on the face of said requested instruction.

Nineteenth assignment of error. The court erred in giving to the jury the following instruction, to wit:

"If you believe from the evidence that the direct consequence of the said writs of attachment and the levying of the same upon logs and other properties of the plaintiff levied upon would have caused the suspension of the plaintiff's business for the period of time which it would have taken the said saw-mill to have sawn up said logs in the usual course of business, then the plaintiff is entitled to damages for the loss of the use of its said mill, and the suspension of its business during such period of time considering any deduction or mitigation of damages from the fact that the plaintiff operated its
43 mill and sawed up such logs with the consent of the sheriff or from the fact that the plaintiff gave an indemnity bond to the sheriff, or a forthcoming bond."

On the grounds following, to wit:

(1.) On the ground that the law does not allow the defendant in this case any mitigation of damages on account of any benefits the plaintiff derived by the giving of indemnity bonds or forthcoming bonds, or from any other arrangement with the sheriff.

(2.) Because it was not a duty the plaintiff owed to defendant to give any indemnity or forthcoming bond to the sheriff.

Twentieth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

The giving of the indemnity bonds to the sheriff to enable the plaintiff to ship any part of the timber and lumber and account to the sheriff for its proceeds does not give the defendant in this suit any right to have the damages reduced that plaintiff sustained in consequence of such attachment.

On the grounds following, to wit:

(1.) On the ground that it contained a correct principle of law, and defendant was not entitled to any mitigation of damages because the plaintiff gave the sheriff indemnity bonds, and

(2.) Because by giving such bonds and taking such property into plaintiff's possession, plaintiff held the property as bailee for the sheriff and subject to his order.

Twenty-first assignment of error. The court erred in refusing to give the following instruction requested by the plaintiff, to wit:

The defendant's attorneys have during the trial of this cause announced that the Atlantic Lumber Company is under obligations to pay whatever judgment may be recovered in this case against The Fidelity & Deposit Company, the defendant here. The court instructs you that you will exclude entirely from your consideration such announcement by defendant's attorneys; and that you must not allow yourselves to be influenced in the slightest degree by any consideration as to who is liable to pay such judgment as may be recovered in this action. You have sworn to truly assess the damages in this action, and any failure to keep that oath would be a flagrant disregard of your duty as jurors.

On the grounds following, to wit:

(1.) Because the declaration by defendant's attorneys in
44 the said instruction mentioned was calculated to have an improper influence upon the jury.

(2.) That such declarations were improper and for the purpose of improperly influencing the jury.

(3.) Because said plaintiff had the right to have such declarations excluded from the consideration of the jury.

Twenty-second assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

While the attachments were pending it was not the duty of plaintiff's stockholders to raise and put new capital into its business in order to continue the same, or lessen the damages it might sustain in consequence of these attachments. The stockholders owed no such duty to defendant.

On the grounds following, to wit:

(1.) On the ground that it was not a duty the stockholders of the plaintiff owed defendant to put fresh capital into defendant's business to enable the plaintiff to continue in its business which was interrupted by the attachments, for the purpose of lessening the damages in consequence of such attachments.

And on other grounds appearing on the face of said requested instruction.

Twenty-third assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

In a civil case like this it is not necessary for you to find the existence of any fact beyond a reasonable doubt. It is sufficient to find any fact to be true, if the weight or preponderance of the testimony tends to establish such fact.

On the ground that it contained a correct principle of law as to the sufficiency of proof of any fact in a civil case.

Twenty-fourth assignment of error. The court erred in giving to the jury upon its own motion, the following instruction, to wit:

All these questions that have come in in regard to the damages; all this testimony that has come in to awaken your sympathies in behalf of one or the other, is not for you to consider; the only question is a clear-cut question, it is how much damages did the Bucki Company suffer. This question becomes more difficult by reason of facts and circumstances attending the writs of attachment.

At the time the writs of attachment were levied, there were
45 two common-law suits commenced both of which have been
-termined. That is one attending circumstance. The other is that the Atlantic Lumber Company cancelled its contract or considered it cancelled. That is the Atlantic Company refused and ceased to deliver any more logs to the Bucki Company. So that the three combining circumstances, the levy of the writs of attachment, the ceasing to furnish logs, and the common-law suits unite in being the cause for subsequent suffering of damages by the Bucki Company.

The law is distinct that where a party sets in motion a wrong, an intervening wrong will not prevent the party instituting or setting in force that wrong from being liable for all damages which can be directed to that.

But in this case, the attachments did not cause the stopping of the furnishing of logs, nor did the issuing of the attachment cause the institution of the common-law suits. I therefore say that it is difficult for you to determine how much damage the Bucki Company suffered by reason of the issuing of the attachments.

If there is any question upon which the court considers a verdict would not be justified in any way in which it might be viewed, then it is the duty of the court to withdraw from the jury that question.

As I say that law is that all the damages that can be awarded against a surety on the new bond where there is no malice alleged, where a party merely becomes responsible for the direct damages that have been caused—the damages must be strict and positive.

Taking into consideration the several causes, contemporaneous-tending to interfere with the business of the Bucki Company, tending to injure their credit, or break up their business, I was satisfied from the evidence that there could be no positive, certain or direct damages which could be charged to the issue of the attachments as separate and distinct from the other causes in the case.

I have therefore, as you have seen, in the course of the case granted a motion to exclude from your consideration all testimony as to damages for loss of credit and all testimony as to all profits the Bucki Company might have made in the future in procuring capital, in procuring lands, in procuring logging plants and procuring logs, at a profit, and so manufacturing lumber therefrom at a profit. As I say, there was so much uncertainty, there was no certainty under the law for determining what damages have been suffered by the party in this case. I therefore instruct you gentlemen,
that the damages must be confined to the damages suffered
46 by the detention of the mill for the time being. Those damages that have arisen by the detention of and taking the mill properties from the possession of the plaintiff.

On the grounds following, to wit:

(1.) Because it contains incorrect principals of law.

(2.) Because the alleged contributory causes of damages, to wit: the bringing of the common-law suits by the Atlantic Lumber Company and ceasing to furnish logs by the Atlantic Lumber Company to the plaintiff were not admissible and could not legally be considered by the jury for the purpose of reducing damages sustained by reason of the writs of attachment.

(3.) If such contributory causes were admissible they should have been submitted to the jury together with the question of damages caused by the attachment.

(4.) Because it is no concern of the court that the jury might have difficulty in properly determining the amount of damages the evidence before the jury being legal evidence and sufficient to enable the jury to assess the damages.

(5.) Because the court had no right to take from the jury the question of the amount of damages sustained by the attachments because — the alleged contributory causes: the pendency of the common-law suits and the ceasing to deliver logs might have contributed to such damages.

(6.) Because upon the evidence before the jury there was reasonable certainty as to the amount of damages caused by the writs of attachment.

(7.) Because the following language in said instruction, to wit: "I therefore instruct you gentlemen that the damages must be confined to the damages suffered by the detention of the mill for the time being," was inconsistent with and repugnant to the preceding portion of the said charge.

(8.) Because the following language in said instruction, to wit: "As I say, that law is that all the damages that can be awarded against a surety on the bond where there is no malice alleged, where a party merely becomes responsible for the direct damages that have

been caused, the damages must be strict and positive," was calculated to mislead the jury as to the character of the evidence upon which they were to assess damages, and the words: "the damages must be strict and positive," were not justified by the law as to certainty of proof upon which the jury might estimate damages.

47 Twenty-fifth assignment of error. The court erred in refusing to give to the jury the following instruction requested by the plaintiff, to wit:

If the jury believe from the evidence that if these attachments had not been levied, the plaintiff had, or would have had and owned on October 1st, 1897, sufficient unencumbered property real and personal to have enabled it to supply its mill with logs and continue in business, then the fact that one of its drafts went to protest on June 2nd, 1897, and was paid the next day; and the fact that some of its drafts were protested between July 14th and August 15th, 1897, which were paid a few days after such protests, are entirely immaterial in this case upon the subject of its ability to have continued in business after October 1st, if these attachments had not been levied. The important question is what was its financial condition October 1st, 1897.

On the grounds following to wit:

(1.) Because it contained a correct principle of law, and

(2.) Because it was essential to enable the jury to properly apply the evidence in respect to the financial condition of the plaintiff on October 1st, 1897, when the attachments were issued and levied, and

(3.) Because the failure to pay, temporarily, one or more drafts previous to October 1st, should, in its effect have been explained to the jury by the court to have been immaterial.

Twenty-sixth assignment of error. The court erred in refusing to give to the jury the following instruction prayed for by the plaintiff, to wit:

It is in evidence that on the 6th day of February, 1899, the plaintiff's mill properties were sold by the sheriff of Duvall county on an execution issued on a judgment in favor of Schwaab for the sum of two thousand dollars, and the properties were purchased by one Henry Weiler. If you believe from the evidence that this sale was one of the direct consequences following these attachments, then the amount of damages should not be reduced because of such sale; in other words, if you believe from the evidence that the plaintiff incurred the indebtedness on which this judgment was recovered after October 1st, while engaged in a reasonable effort to do business, and that in consequence of such attachment, the plaintiff was not able to pay this debt and continue in business, then you will not diminish the amount of damages you award on the ground that such sale took place.

On the grounds following to wit:

48 (1.) Because it contained a correct principle of law, and plaintiff had the right to have submitted to the jury the question whether the alleged sale of its mill properties under an execution was the direct and proximate consequence of the said writ

of attachment, and if it was then that the damages which the plaintiff sustained should not have been reduced.

Twenty-seventh assignment of error. The court erred in refusing to give to the jury, the following instruction requested by the plaintiff, to wit: The court further instructs you that the plaintiff had the right to have the motions to dissolve the attachments heard and tried separately from the trial on the merits of the cases of The Atlantic Lumber Company against The L. Bucki & Son Lumber Company, and plaintiff was not obliged to wait until the issues on the merits of said cases had been made up before the said motions were tried; and in answering the question as to the amount of such attorneys' compensation you will not diminish such amount because at the trial of the said case on the merits subsequently had, some of the same questions of law and fact were involved on the trial of such cases on the merits as had been previously involved on the trial of the motions to dissolve the attachments; providing you find from the evidence that all the services rendered by such attorneys in preparing for the trial, and on the trial of such motions were caused and were the direct and proximate consequence of the issuing of such attachment.

On the grounds following, to wit:

(1.) On the ground that it contained a correct principle of law.

(2.) Because the plaintiff was not obliged to wait, under the laws of Florida, until the issues were made up on the merits of the case before trial on the motion to dissolve the attachment, and to have the motion and the said issues tried together.

(3.) Because a separate trial of the said motion had been adjudged to the plaintiff in the trial of the said suit by the Atlantic Lumber Company, and was *res judicata*.

(4.) On the ground that the amount of attorneys' fees for services rendered on the motion for the dissolution of the attachment and preparing for the trial of the same should not be diminished because some of the questions involved in said motion were also involved in the trial on the merits afterwards.

Twenty-eighth assignment of error. The court erred in giving to the jury of its own motion the following instruction, to wit:

49 "The defendant in this cause was not the original actor in bringing these suits, or suing out these attachments; they gave bond to pay all damages arising out of the improperly suing out of said attachments. A party has a perfect right to sue out an attachment by becoming liable to pay all damages; there is no law against it; it is not a tort; but he becomes responsible to pay all damages from the issuing of the attachment.

On the grounds following, to wit:

(1.) On the ground that the language of the said instruction was calculated to mislead and produce an erroneous impression upon the jury.

(2.) Because the defendant company was a party to the setting in motion of the attachment suits.

(3.) Because a party has not a perfect right to sue out an attachment by becoming liable to pay all damages; such right exists only

where a liquidated debt due or capable of liquidation by some definite rule, exists; and the Atlantic Lumber Company had no right to sue out an attachment under the laws of Florida by making affidavit that the plaintiff owed the said company seventy-five thousand dollars, basing such claim on profits it expected to make by further performing the contract.

(4.) Because issuing and levying an attachment is a tort if not sustained. It is not a contract or a crime, is unlawful and must be a tort.

Twenty-ninth assignment of error. The court erred in excluding and refusing to admit in evidence the written contract between the Atlantic Lumber Company and the plaintiff under which the logs were sold and delivered by the said company to the plaintiff, on the grounds:

(1.) Because the contents of said contract became material in the trial of the case; so much so that the court allowed oral testimony as to the contents of such contract to go before the jury, and

(2.) On the ground that said contract was the best evidence of the contents thereof.

Thirtieth assignment of error. The court erred in granting the motion made by the defendant after the testimony was closed in the case to exclude so much of the testimony as tended to prove the profits which the plaintiff had made in its business for several months prior to the date the attachments were levied, and in ruling and deciding on said motion that testimony as to injury to credit or loss of profits was too remote, uncertain and speculative to be considered by the jury, and in excluding all testimony as to
50 damages to credit and loss of profits, and in excluding all evidence relative to the market price of lumber subsequent to the attachments; and further erred in ruling and deciding on said motion that testimony as to profits be retained only for the purpose of determining the damages suffered between the first day of October, and the eleventh day of October, 1897, on the grounds:

(1.) That the plaintiff had the right to have submitted to the jury, the question whether or not the plaintiff could have continued in the usual course of business if those attachments had not been levied, and the amount of its profits the plaintiff lost by reason of such attachments, and

(2.) On the further ground that the declaration was framed and the trial proceeded to the close of the testimony, on the theory that it was proper for the jury to consider the profits of plaintiff's business prior to October, 1897, as a basis upon which to estimate profits lost after October 1st, 1897, and

(3.) On the further ground that such ruling took the plaintiff by surprise, and thereby it was prevented from proving elements of damages other than the loss of profits, which elements of damages would have been included in the loss of profits aforesaid.

Thirty-first assignment of error. And the court erred in refusing to grant the motion of the defendant to discharge the jury, and postpone the trial of the case as set forth in the bill of exceptions, on the grounds:

(1.) That the ruling of the court excluding testimony as to profits made prior to October, 1897, and all testimony as to injury to credit by reason of the attachments, took the plaintiff by surprise, and thereby deprived the plaintiff from proving elements of damages which were included in the damage by loss of profits and damage to credit, and which said other elements of damages the plaintiff could have proven and would have proven had the plaintiff not been misled by the ruling of the court allowing testimony to be adduced establishing loss of profits and loss of credit, and the profits of plaintiff's business prior to October 1st, 1897.

And on other grounds appearing on the face of said motion.

Thirty-second assignment of error. The court erred in excluding all evidence as to profits made by the plaintiff prior to October 1st, 1897, except for the period of time between Oct. 1st and Oct. 11th, 1897, on the ground that the court excluded such testimony on the theory that the common-law suits in which the attachments were issued and the ceasing of the Atlantic Lumber Company to deliver any more logs after the 1st of October, were causes contributory to the damages sustained by the issuing of the attachments and it was not proper to submit to the jury the question as to how much damage the writs of attachment caused, because the jury would be unable to separate and distinguish the damages caused by the writs of attachment, and those caused by the common-law suits and ceasing to deliver logs. This was error on the following grounds, to wit:

51

(1.) Because such alleged contributory causes were not admissable to go before the jury.

(2.) If admissable to go before the jury, they should have been submitted to the jury together with the damages caused by the attachments, and the jury should have been instructed that the said contributory causes must have produced the same damages if no attachments had been issued, as were produced by the issue of the attachments; otherwise that the jury should not diminish the damages in consequence of said contributory causes.

Thirty-third assignment of error. The court erred in excluding the written contract between John N. C. Stockton and Charles L. Bucki, which is in the bill of exceptions, on the grounds following to wit:

(1.) On the ground that the said contract was the best evidence of the relations that existed between the said Stockton and Bucki, in the year 1898, and a part of the necessary evidence for the jury to determine whether or not the plaintiff derived any benefit from the operation of the plaintiff's mills during any part of the year 1898.

And on other grounds appearing on the face of said contract.

Thirty-fourth assignment of error. The court erred in refusing to exclude the testimony of one Bion Barnett, cashier of the National Bank of Jacksonville, who was examined for the purpose of establishing his opinion as to the credit the plaintiff would have under the circumstances stated in the testimony set forth in the bill of exceptions, which was error,

(1.) Because such testimony was not admissable as expert testimony, and

(2.) Because the question of credit which the plaintiff would have upon the testimony before the jury was a question exclusively for the jury, and of which they were the proper judges, and of which they were as capable of judging as Mr. Barnett.

Thirty-fifth assignment of error. The court erred in excluding from the judgment the sum of seven thousand five hundred
52 dollars which the jury found specially in their verdict, as a reasonable compensation for plaintiff's attorneys for services rendered on the trial of and preparing for the trial of the motion to dissolve the attachment.

This was error on the following grounds, to wit:

(1.). Because the amount of reasonable attorney's fees was an element of the damages sustained by the attachments,

(2.) Because it was a question of local law arising upon a statute of Florida authorizing the issue of attachments, and providing the condition of the bond upon which attachments can issue.

(3.) Because the supreme court of Florida had previously decided that reasonable attorney's fees on such a motion are proper elements of damages, and such decisions of the supreme court of Florida were obligatory upon the Federal court.

Thirty-sixth assignment of error. The court erred in excluding from the jury, the testimony which had been read in evidence, of Alfred J. Rothero, book-keeper of the Degnon-McLean Construction Company, as stated in the bill of exceptions. This was error on the following grounds, to wit.

(1.) One of the elements of damages claimed in the declaration was the loss sustained by reason of the attachments disabling the plaintiff from delivering certain timber and lumber to the Degnon-McLean Construction Company, which timber and lumber the said company bought in New York city, and charged plaintiff with the difference between the price at which the plaintiff had sold it to said company, and the price which the said company had to pay for such timber and lumber; and the testimony of the said book-keeper established that such charges were made against the plaintiff. The court excluded the said testimony on the ground that while the said book-keeper made the entries in the books, to which he testified and to their correctness, and that they were made in the usual course of business, he did not know of his own knowledge that the items of the charges were correct, for such items of charges were handed in to him as such book-keeper by other employés of the Degnon-McLean Construction Company.

This was error on the grounds following, to wit:

(1.) On the ground that such items being furnished the book-keeper, and being entered in the books in the usual course of business of any established business concern are presumptively correct and *prima facie* admissible.

Thirty-seventh assignment of error.

Also the words "traveling expenses of the officers and
53 agents of plaintiff to attend court and in preparing for the trial of said motion to dissolve the said attachment;" the said

attachment proceedings having been published in daily newspapers of large circulation, to-wit: in the Times-Union and Citizen and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers, on the fourteenth page of the said record, and in the eighth paragraph of the first count of said declaration.

And the words "traveling expenses of the officers and agents of plaintiff, to attend court, and in preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out large sums of money as" and the words "and attorney's fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money as attorney's fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the improper issuing of the said writ and the levy thereof, as aforesaid, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business aforesaid, for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to-wit: in the Times-Union and Citizen, and in the Metropolis both being newspapers published in the said county of Duval, and "in other papers" in the twenty-third and twenty-fourth pages of said declaration.

On the grounds following, to-wit:

(1.) The clauses and paragraphs above mentioned, and stricken — and not restored to the declaration, state items of damages that the plaintiff could have proven, and offered to prove, and damages that were sustained in consequence of the writs of attachment, and

(2.) On the further ground that the effect of, and damages in consequence of the levy of the writs of attachment are questions of fact for the determination of the jury, and plaintiff has a constitutional right to have such questions submitted to the jury, and on the further ground

(3.) That it is impossible for the court to determine that any item of damages is not the direct and proximate result of the levying of the attachments, and is too remote, before it has heard all the evidence and has before it all the facts and circumstances showing the injury and damage the plaintiff sustained.

(4.) On the further ground that the plaintiff and its counsel believe that the learned circuit court was misled to make the order striking out said parts of the declaration, and to make its
54 ruling and decision declining to reinstate said parts of the declaration, by dicta and decisions of courts in cases which from their facts and circumstances have no application to this action.

Know all men by these presents, That we, Charles Lloyd Bucki, and Horatio Bisbee, are held and firmly bound unto the Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of Maryland, in the penal sum of one thousand dollars, for the payment whereof, well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this fifteenth day of March, A. D. 1900.

The condition of the foregoing obligation is such, that whereas L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, has sued out a writ of error from a judgment of the circuit court of the United States, in and for the southern district of Florida, rendered on the eighth day of February, A. D. 1900, in a certain cause therein lately pending, wherein the said L. Bucki & Son Lumber Company was plaintiff and the said The Fidelity & Deposit Company of Maryland was defendant returnable to the United States circuit court of appeals on the second day of April, A. D. 1900. Now if the said L. Bucki & Son Lumber (Company) shall prosecute its said writ of error to effect, and if it fail to make its plea good shall answer all costs, then this obligation shall be null and void, else to remain in full force and virtue.

CHAS. LLOYD BUCKI. [SEAL.]
HORATIO BISBEE. [SEAL.]

Upon consideration, the foregoing bond is approved and writ of error therein mentioned allowed. In open court this 15th day of March, 1900.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Bond on writ of error. Filed Mar. 15th, 1900. E. O. Locke, clerk.

55 In the Circuit Court of the United States for the Southern District of Florida, December Term, 1899.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Be it remembered, that at a term of the circuit court of the United States for the southern district of Florida, began and held in Jacksonville, in said district, on Monday, the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, a cause therein pending, wherein L. Bucki & Son Lumber Company, a corporation organized under the laws of the State of New Jersey, was plaintiff and The Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, was defendant, came on to be heard before the Honorable James W. Locke, a judge of the said circuit court, at which day came the said parties by their respective attorneys. And thereupon, the said issues, in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issues in manner aforesaid joined, and thereupon the plaintiff, to maintain the issues on its part, produced and offered and read in evidence the affidavits and writs of attachment set forth in the two counts of the declaration, and the return of the sheriff on

the said writs, and the return on the said writ mentioned and set forth in the first count of the said declaration was in the words and figures following, to wit:

Received this writ on the 1st day of October, A. D. 1897, at 6.25 p. m. N. B. Broward sheriff, by R. H. McMillan. And executed the same in the county of Duval, Florida, on the first day of October A. D. 1897, by levying upon and taking into my possession one million two hundred and fifty thousand feet of yellow-pine merchantable lumber belonging to the defendant L. Bucki & Son Lumber Company, at its mill site in the city of Jacksonville, county of Duval, State of Florida.

N. B. BROWARD,
Sheriff of Duval County, Florida,
By R. H. McMILLAN, *Deputy.*

On the 11th day of October, 1897, I delivered the attached
56 porperty to the defendant upon receiving and approving a forthcoming bond in accordance with the statute.

N. B. BROWARD,
Sheriff of Duval County, Florida,
By R. H. McMILLAN,
Deputy Sheriff.

And the return of the said writ of attachment mentioned and set forth in the second count of the said declaration was in the words and figures following, to wit:

Received this writ on the first day of October A. D. 1897, at 6.25 o'clock p. m., and executed the same in the county of Duval, Florida, on the 1st day of October A. D., 1897, by levying on and taking into my possession the personality and levying on the realty as particularly set forth by the description hereto attached. On the 4th day of November, A. D. 1897, I delivered the attached personal property to the defendant upon receiving and approving a forthcoming bond in accordance with the statute.

N. B. BROWARD,
Sheriff of Duval County, Florida,
By R. H. McMILLAN,
Deputy Sheriff.

(On the attached description sheet.)

The certain lands lying, being and situate in Duval county, Florida, described as follows, to wit: All that tract of land being situate in Jacksonville, Florida, being a part of the Barton donation in Duval county, beginning at a cedar post standing on the west bank of the St. Johns river, where a fence now stands on the north side of land owned by Adonizad S. Welch and running on a line with said fence westward until it intersects the east branch of Deer creek, thence along the course of said creek to the St. Johns river, thence along said river to the place of beginning, containing about ten acres, in section forty-eight, township two, south range twenty-seven east, being the same premises conveyed by Eben Hunting to

the L. Bucki & Son Lumber Company by deed dated December 16th, 1893, recorded in book 89, folio 463, and also conveyed to said Eben Hunting by David Wilson and Caroline Wilson by deed dated May 2nd, 1899, recorded in deed book B. Z., folio 752. The foregoing description being intended to embrace all of the parcel of land occupied by the L. Bucki & Son Lumber Company as a mill site, mill premises and lumber yard in Jacksonville, Florida. Together with all and singular the ways, woods, waters, riparian rights, wharves, docks, buildings, erections, fixtures and machinery thereon erected, and structures, and all the appurtenances thereunto
57 belonging, or in anywise appertaining, including also the trucks, implements and various furnishings used along with and as a part of the mill property.

One covered lighter 100 x 27 feet; two lighters 100 x 27 feet each; three mules and carts; all the round timber or logs, about 3,000,000 feet; and the certain sawn lumber measured at 3,508,920 feet; the same each and every being found and now held at and about and in the waters adjacent to, the mill site above described.

N. B. BROWARD,
Sheriff of Duval County, Florida,
By R. H. McMILLAN,
Deputy Sheriff.

And the testimony tended to establish that the actual quantity of timber and lumber levied on by the sheriff (before the said logs were sawn) was upward of 5,200,000 feet.

And the plaintiff read in evidence the motions to dissolve the said writs of attachment, and the judgments of the said circuit court of the United States dissolving the said attachments, which said motions and said judgments are in the words and figures following, to wit:

"Comes now the defendant by H. Bisbee, its attorney and moves a dissolution and dismissal of the writ of attachment in the above-entitled action on the following grounds:

"First. Because there are no facts stated in the affidavit upon which the attachment was based, establishing that the plaintiff had any lien upon any of the property mentioned in the affidavit, which appears from the reading of the affidavit itself.

Second. Because it is an action at law to enforce a statutory lien, the right to an attachment upon the property upon which the lien is claimed is not given by the statute of this State.

Such right to attachment is only given when suit is brought by bill in equity to enforce the lien.

Third. Because it does not appear from the face of the bond given in this action, nor from the record, that the said bond is a legal and valid bond required by the statute in such case made and provided.

(*a.*) Because the name of the surety given and described in the body of the bond is not identical with the name of the surety signing the bond.

(*b.*) Because it does not appear from the face of the bond nor from

the record, that the surety who signed the bond had the requisite legal authority to do business in the State of Florida, or to sign said bond.

58 (*c.*) Because it does not appear from the face of the bond, nor from the record, in what capacity D. U. Fletcher claims to have acted in signing the name of the surety to the bond, nor that he was authorized to sign it.

(*d.*) Because the body of the bond is printed on a typewriter and the words "Frank H. Elmore, agent for" are interlined in manuscript in the first line and in the seventh line without any note at the bottom of the bond that the same was done before execution.

(*e.*) Because the words "agent for" are not equivalent of the words, "as agent for" and it does not appear on the face of the bond that Elmore in giving the bond acted as agent for the plaintiff.

Because the bond does not bind the heirs, executors and administrators of Elmore.

(*g.*) Because the bond recites the issuing of a writ of attachment against the goods and chattels, lands and tenements generally of the defendant, and the condition of the bond is to pay costs and damages for the improperly issuing of such a writ of attachment, and such a writ of attachment never was issued.

(*h.*) The writ of attachment actually issued only authorized the sheriff to levy on the property described in the affidavit, and there is no bond whatever conditioned for the improperly issuing of the writ of attachment actually issued.

Fourth. For divers other good and sufficient reasons appearing on the face of the affidavit and of the record.

If the court denies the motion to dissolve the attachment upon any of the grounds hereinbefore stated, then the defendant moves to dissolve the attachment and dismiss the writ upon the ground that the averments of facts traversed by the defendant's affidavit are not true, either as to the debt due or the grounds of attachment.

Wherefore defendant prays the judgment of the court.

Oct. 20th, 1897.

H. BISBEE,
For Defendant.

(Indorsed:) Motion to dissolve attachment. Filed Oct. 23rd, 1897. E. O. Locke, clerk.

59 *Order Dissolving Attachment.*

THE ATLANTIC LUMBER COMPANY
vs.
L. BUCKI & SON LUMBER COMPANY. } No. 1.

This action was heard on motion by defendant to dissolve the writ of attachment therein and upon motion of plaintiff to amend the affidavit and declaration herein and was argued by counsel.

Upon consideration thereof, it is ordered that the said motion to amend be denied inasmuch as it is considered that amendments presented do not cure the defects of the original pleadings and the

said writ of attachment be and is hereby dissolved, and that the property levied on by virtue of that writ be surrendered up to the possession of the defendant.

Done in open court this 1st day of November, 1897.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Order dissolving attachment, filed Nov. 2nd, 1897. E. O. Locke, clerk.

THE ATLANTIC LUMBER COMPANY
vs.
L. BUCKI & SON LUMBER COMPANY.

Comes now the defendant by H. Bisbee, its attorney, and moves the court for an order dissolving the attachment in the above-entitled action upon the following grounds appearing on the face of the declaration filed January 7th, 1898, and other parts of the record in the case.

First. Because the cause of action in the first count of the said declaration is for the price of logs delivered, for which the plaintiff brought suit and obtained another attachment, which has been since dissolved by order of this court.

Second. Because the second count of the said declaration including its subdivisions six common counts, taken in connection with the bill of particulars filed therewith show no cause of action for the sum of seventy-five thousand dollars, and no ground for a writ of attachment of $75,000.

Third. The third, fourth, fifth, sixth, seventh and tenth counts in the said declaration and neither of said counts states any cause of action which is or can be made, a basis for an affidavit and writ of attachment in the sum of $75,000.

(*a.*) Each of said last-mentioned counts is for unliquidated
60 damages of too indefinite, uncertain and speculative character to form the basis for a writ of attachment in the sum of $75,000.

(*b.*) Because none of said last-mentioned count- states a breach of the contract on the part of the defendants.

(*c.*) Because each of said counts sets forth a breach by the plaintiff before the said alleged breach by the defendant.

(*d.*) Because it appears in each of said counts that the written contract set forth therein was abandoned by the plaintiff with the consent of the defendant.

2. Because all of said counts in the declaration are repugnant and irreconcilably inconsistent and double, and uncertain in their allegations.

Fourth. That no cause of action is stated in the eighth and ninth counts which could form a basis for an affidavit in attaching the sum of $75,000.

(*a.*) Because on the 4th of October, 1897, plaintiff sued the defendant in the circuit court of Duval county for the identical cause of action set up in the eighth and ninth counts in which action writ

of attachment issued and levy was made by the sheriff of said county to secure the sums of money in the said count stated, which said suit is still pending, and which said attachment is in full force and effect.

Fifth. Because neither the 11th or 12th counts of said declaration show any cause of action which is or could be made basis of an affidavit in attachment in the sum of $75,000.

Sixth. The said declaration and all the counts therein do not show a cause of action which is or can be made the basis of an affidavit or writ of attachment in the sum of $75,000.

Seventh. For other causes appearing on the the face of said declaration and each and every count thereof.

Eighth. On the ground that the bond given for the writ of attachment for the sum of $75,000 in the sum of $150,000 is not a good bond on the face thereof, and for divers reasons appearing on the face thereof.

(*a.*) For the reason that the description of the surety in the body of the bond is different from the description of the surety in its signature to the bond.

(*b.*) Because neither the bond, nor any paper attached thereto shows that the surety to the bond had obtained the certificate under the laws of the State of Florida to do business in the State of Florida.

(*c.*) Because it does not appear from the face of the said bond that D. U. Fletcher was the agent, or had any authority, as the agent of the surety to sign its name to the said bond.

61 Please take notice that the above motion will be made Monday, the 10th day of January, 1898, at ten o'clock a. m., or as soon thereafter as the court can hear the motion.

To R. H. Liggett, Esq., attorney for plaintiff.

H. BISBEE,
Def't's Att'y.

(Indorsed:) Motion to dissolve attachment. Filed this 10th day of Jan., 1898. E. O. Locke, clerk, by Louis Starke, deputy.

In the Circuit Court of the United States, Southern District — Florida.

THE ATLANTIC LUMBER COMPANY
vs.
L. BUCKI & SON LUMBER COMPANY.

On motion of the defendant in this action to dissolve the writ of attachment for the sum of seventy-five thousand dollars upon issues of fact raised upon the formal pleadings made and filed herein, the court does not find that the defendant was indebted to the plaintiff in the sum of seventy-five thousand dollars on the 1st day of October, A.D. 1897. It is therefore ordered by the court the said writ of attachment be and the same is hereby dissolved and dismissed and that the property upon which the said writ was levied be restored to the defendant, and the defendant recover his costs in this behalf

expended, taxed at $407.65, to which ruling and order plaintiff excepts.

JAMES W. LOCKE, *Judge.*

March 14th, 1898, Jacksonville, Florida, as of February 14th, A. D. 1898.

(Indorsed:) Order on motion to dissolve attachment as amended by order of March 14th, 1898. Filed Mar. 14th, 1898. E. O. Locke, clerk.

And the plaintiff, by its attorney, offered and read in evidence its motion for a separate trial of the said motion to dissolve the attachment for seventy-five thousand dollars, and the order on said motion, which said motion and said order are in the words and figures following, to wit:

ATLANTIC LUMBER COMPANY
vs.
L. BUCKI & SON LUMBER COMPANY.

Now comes the defendant by H. Bisbee its attorney, and moves the court for a continuance of the above-entitled action on
62 the merits of the case until the spring session of this court and for an order directing that the motion to dissolve the attachment on issues of fact be tried separately from the action on merits upon the following grounds, to wit:

First. The trial of the action on the merits and the motion to dissolve the attachment upon issues of fact made in said action cannot be legally tried at one and the same time, either by a jury or by the court.

Second. The defendant has an absolute legal right to have a trial of a motion for a dissolution of the attachment had separately from a trial of the case on its merits.

(*a.*) Because on a trial the trial of a motion to dissolve, the merits of the action cannot be gone into, the question on such motion being not whether the defendant owes the plaintiff anything, but whether the defendant owes the plaintiff the amount sworn to in the attachment affidavit, and whether any of the special causes sworn to in the affidavit are true.

(*b.*) Because on motion to dissolve the attachment on issues of fact, the jury are sworn to try a different issue that when they are sworn to try the case on the merits, and if sworn to try both issues it would tend to confuse the jury and would require two separate and distinct verdicts, one of which might be a verdict for the defendant and the other verdict for the plaintiff.

(*c.*) If the motion to dissolve the attachment, and the cause on the merits are tried at one and the same time, and a verdict should be rendered for the defendant on the trial of the motion, and for the plaintiff on the trial of the merits, there is no way to apportion the costs in taxing same in respect to the two trials. From the number of witnesses already subpœnaed in this case, the costs amounting to about one hundred dollars per day.

(*d.*) Because on the trial of the motion to dissolve on issues of fact the verdict of the jury is either for the plaintiff without stating any sum of money or for the defendant. If for the plaintiff the only judgment rendered is an order denying the motion to dissolve with costs; if for the defendant, an order dissolving the attachment with costs.

Third. The trial of the motion to dissolve the attachment on issue of fact, and the judgment thereon is not *res judicata* on any question which may arise on the trial of the merits of the case, and has no effect upon the issue on the merits of the case than any other judgment in collateral motion made in an action before trial on the merits:

(*a.*) The issues of fact tried on motion to dissolve the attachment are different issues of fact than those on the trial of the merits,
63 and the seventh amendment of the Constitution has no application to such trial of the motion to dissolve.

Fourth. Because the issues in the action on the merits are not made up, and if they were made up, the defendant is not ready for trial on the merits.

(*a.*) The last declaration was filed on the 7th day of January, 1898, and was filed *ex parte* without notice, and without any order of the court and defendant has until the first Monday in February next to file pleas to the declaration on the merits.

(*b.*) Until all the issues of fact are made up on the merits of the case, the court is without any jurisdiction to try the same on the merits.

(*c.*) Because it would be unreasonable to force a party to trial immediately upon the issues being made up in view of the history of this case, especially so in view of the multiplicity of the questions of fact and of law that have arisen and will arise in it.

Fifth. For divers other reasons appearing on the face of the record and proceedings in the case.

Sixth. On the ground of the absence of material witnesses, some of *which* reside out of the State, to wit: in the State of New York, and documentary evidence in the State of New York which defendant has not procured, and the attendance of which witnesses the defendant has not procured, nor the depositions of said witnesses, because the defendant relied upon the right by statute to trial upon motion to dissolve the attachment without going to trial on the merits of the case at the same time.

Seventh. Because two actions are pending between the same parties, and only one declaration has been filed, one action commenced by affidavit in attachment on the 1st of October, 1897, and the other by pracipe for summons on the second of October, 1897, and the second action can embrace a cause of action, to wit: on the amount due on the last installment of logs before this suit was brought, which amount cannot be made a basis of attachment on the first of October aforesaid.

H. BISBEE,
Attorney for Def't.

Received a copy of foregoing motion this 20th of January, 1898.

R. H. LIGGETT,
Plaintiff's Attorney.

ATLANTIC LUMBER COMPANY
vs.
L. BUCKI & SON LUMBER COMPANY.

Please take notice that on Friday, the 21st day of January,
64 1898, at ten o'clock a. m., or as soon thereafter as the court can hear the motion, I shall call up the foregoing motion for action by the court thereon.

H. BISBEE,
Attorney for the Defendant.

To R. Liggett, attorney for plaintiff:

Service of the foregoing motion accepted this 20th of January, 1898.

R. H. LIGGETT,
Of Counsel for Plaintiff.

(Indorsed: Motion for continuance and separate trial of motion to dissolve. Filed Jan. 21st. E. O. Locke, clerk, by Louis Starke, deputy.)

Order upon Motion for Continuance and Separate Trial of Motion to Dissolve.

THE ATLANTIC LUMBER COMPANY
vs.
L. BUCKI & SON LUMBER COMPANY.

This cause coming on to be heard upon motion of defendant for the continuance of the entitled action on the merits of the case, until the spring session of this court, and for an order directing that the motion to dissolve the attachment on issues of fact be tried separately from the action on the merits, and having been fully heard and submitted by counsel, it is ordered that said motion be granted.

Done and ordered in open court this 21st day of January, 1898.

JAMES W. LOCKE, *Judge.*

To which ruling the plaintiff excepts.

JAMES W. LOCKE, *Judge.*

(Indorsed: Order granting motion for continuance and for separate trial of cause on motion to dissolve. Filed Jan. 21, 1898. E. O. Locke, clerk.)

And plaintiff also read in evidence writ of error from the United States circuit court of appeals for the fifth circuit to review the said judgment dissolving said attachment for $75,000, and the bond given on the said writ of error, which were in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the fifth circuit, southern district of Florida, Greeting:

Because in the record and proceedings, as also in the ren-
65 dition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The Atlantic Lumber Company, plaintiff and L. Bucki & Son Lumber Company, defendant, a manifest error hath happened, to the great damage of the said The Atlantic Lumber Company as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under you (your) seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning same, to the U. S. circuit court of appeals, fifth circuit, together with this writ, so that you may have the same at New Orleans, La., on the 24th day of May, 1898, in the said circuit court of appeals *court*, to be then and there held, *and* the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 25th day of April, in the year of our Lord, one thousand eight hundred and ninety-eight.

EUGENE O. LOCKE,
Clerk U. S. Circuit Ct., So. Dist. of Florida.

Allowed by:
JAMES W. LOCKE,
U. S. Judge.

(Indorsed:) Copy of writ of error. Deposited for defendant in error. Filed April 25th, 1898. E. O. Locke, clerk.

Know all men by these presents, that the Atlantic Lumber Company, a corporation organized and existing under the laws of the State of Florida, as principal, and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, duly authorized under the laws of the State of Florida to do business in the State of Florida, as surety, are held and firmly bound unto the L. Bucki & Son Lumber Company, a corporation under the laws of the State of New Jersey, in the sum of fifteen hundred dollars, for the payment whereof, well and truly to be made, they do bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed on the 25th day of April, A. D. 1898.

The condition of the foregoing obligation is such that whereas the said The Atlantic Lumber Company, the principal above named, has sued out a writ of error from a judgment of the circuit court of

the United States for the southern district of Florida, ren-
66 dered on the 14th day of February, 1898, dissolving an attachment in favor of the said principal against the said L. Bucki and Son Lumber Company, to the circuit court of appeals for the fifth circuit of the United States, returnable before the said court of the 25th day of May, 1898, now if the said principal shall prosecute said writ of error to effect, and answer all damages and costs if it shall fail to make its plea good, then this obligation shall become null and void, otherwise it shall remain of full force and virtue.

[SEAL.] THE ATLANTIC LUMBER CO.
ARTHUR MEIGS,
General Manager and Treasurer.
R. H. LIGGETT, *Secretary.*
FIDELITY & DEPOSIT COMPANY
OF MARYLAND,
By D. U. FLETCHER, *Att'y-in-Fact.*
[SEAL.] R. BOWEN DANIEL, *Gen'l Agent.*

Attest:
Approved April 25th, 1898.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Supersedeas bond. Filed April 25th, 1898. E. O. Locke, clerk.

And the plaintiff read in evidence the judgment of the said United States circuit court of appeals affirming the said last-mentioned judgment, which was rendered on the — day of ——, A. D. 1899, and was in the words and figures following, to wit:

"And whereas in the present term of November, in the year of our Lord, one thousand eight hundred and ninety-eight, the said cause came on to be heard before the said United States circuit court of appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court, that the writ of error sent out from the judgment of the said circuit court in this cause be and the same is hereby dismissed.

It is further ordered and adjudged that the plaintiff in error, The Atlantic Lumber Company, and the surety on the writ of error bond herein, The Fidelity and Deposit Company of Maryland, be condemned to pay the costs of this cause in this court for which execution may be issued out of said circuit court.

January 3rd, 1899."

67 And plaintiff read in evidence the judgment in its favor and against the Atlantic Lumber Company, rendered by the said circuit court of the United States in the words and figures following, to wit:

The jury having found a verdict for the defendant upon the 3rd, 4th, 5th, 6th, 7th, 10th and 11th counts of the declaration, it is considered by the court that the defendant go hence without day upon the said counts and that the defendant to have and recover of and

from the plaintiff its costs in this behalf expended to be taxed by the clerk of this court.

Which said judgment was upon the merits in the said suit in which the said writ of attachment for $75,000 was issued.

And plaintiff read in evidence the writ of error from the said United States circuit court of appeals to review said judgment, whereby the said suit was removed to the said court of appeals and the bond given on the said writ, and the order of the circuit court upon allowing the said writ, which said writ of error and said bond and said order were in the words and figures following, to wit:

"The President of the United States to the honorable the judges of the circuit court of the United States for the fifth circuit, southern distict of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The Atlantic Lumber Company, a corporation, plaintiff, and The L. Bucki & Son Lumber Company, a corporation, defendant, a manifest error hath happened to the great damage of the said The Atlantic Lumber Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of appeals of the United States, fifth circuit, together with the writ, so that you may have the same at New Orleans, La., on the sixth day of August, 1898, in the said circuit court of appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the eigth day of July, in the year of our Lord, one thousand eight hundred and ninety-eight.

EUGENE O. LOCKE,
Clerk U. S. Circuit Court, Southern District of Florida.

68 Allowed by:
JAMES W. LOCKE, *Judge.*

(Endorsed:) Copy of writ of error lodged with the clerk, circuit court, for defendant in error. Filed July 8th, 1898. E. O. Locke, clerk.

Know all men by these presents, that the Atlantic Lumber Company, a corporation organized and existing under the laws of the State of Florida, as principal, and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the

laws of the State of Maryland, and duly authorized under the laws of the State of Florida, to do business in the State of Florida, as surety, are held and firmly bound unto the L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, in the sum of fifteen hundred dollars for the payment whereof well and truly to be made, they bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed on this the 5th day of July, A. D. 1898.

The condition of the foregoing obligation is such that, whereas the said The Atlantic Lumber Company, the principal above named, has sued out a writ of error from a judgment of the circuit court of the United States, in and for the southern district of Florida, rendered on the 7th day of May, 1898, in favor of the defendant and against the plaintiff upon certain causes of action set forth in the plaintiff's declaration in said cause, to the circuit court of appeals for the fifth circuit of the United States, returnable before the said court on the 6th day of August, 1898, now if the said principal shall prosecute said writ of error to effect, and answer all damages and costs if it shall fail to make its plea good, then this obligation shall become null and void, otherwise it shall remain of full force and virtue.

THE ATLANTIC LUMBER COMPANY,
By ARTHUR MEIGS, *General Manager.*
FIDELITY & DEPOSIT CO. OF MARYLAND,
[SEAL.] By D. U. FLETCHER, *Att'y-in-Fact.*

Attest: R. H. LIGGETT,
As Secretary of the Atlantic Lumber Company.
Attest: R. BOWEN DANIEL,
[SEAL.] *General Ag't Fidelity & Deposit Co. of Maryland.*

Approved July 8th.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Supersedeas bond. Filed July 8th, 1898. E. O. Locke, clerk.

69 Upon consideration of the foregoing petition of the plaintiff for a writ of error from the final judgment entered in this cause on the 7th day of May, 1898, and upon its application that the said writ of error shall have the effect and operate as a supersedeas of the judgment heretofore entered in this cause on the 14th day of February, 1898, dissolving the attachment number two, issued therein in favor of the plaintiff, it is ordered that the said plaintiff be allowed a writ of error from the aforesaid final judgment entered in this cause on the 7th day of May, 1898, and also a citation to the defendant. And it further appearing to the court that the said plaintiff formerly sued out a writ of error to the United States circuit court of appeals for the fifth circuit, from the judgment heretofore rendered on the 14th day of February, 1898, dissolving the said attachment, and that the court made an order that the said

writ of error should operate as a supersedeas of the said judgment, upon the said plaintiff filing a bond with sufficient security, to be approved by the court, in the sum of fifteen hundred dollars, conditioned according to law, that the plaintiff should prosecute said writ of error to effect, and answer all damages and costs, if it should fail to make its plea good, and that the said plaintiff duly complied with the said order of the court for supersedeas of the said judgment dissolving the said attachment and duly perfected the said writ of error within the time prescribed by law, in which a writ of error may be a supersedeas, whereby the operation of the said judgment of the court, dissolving the said attachment, was suspended, and it further appearing to the court that there is some doubt as to whether or not the aforesaid judgment of the court, dissolving said attachment, was a final judgment, within the meaning of the act of Congress, authorizing a writ of error therefrom, and the court by the aforesaid order for supersedeas, which was complied with, having suspended the operation of the said judgment dissolving the said attachment, it is now ordered by the court that the writ of error hereby allowed by the court from the final judgment of the court aforesaid, rendered on the 7th day of May, 1898, shall operate as a supersedeas of the aforesaid judgment of the court dissolving the said attachment, heretofore rendered on the 14th day of February, 1898, upon the plaintiff filing a bond, with a good and sufficient security, to be approved by the court, in the sum of fifteen hundred dollars, conditioned that it shall prosecute the said writ of error, hereby allowed, to effect, and answer all damages and costs, if it shall fail to make its plea good.

Ordered in open court at Jacksonville, Florida, on this 8th day of July, 1898.

JAMES W. LOCKE, *Judge.*

70 (Indorsed): Order allowing writ of error. Filed May 8th, 1898. E. O. Locke, clerk.

And then the plaintiff *then* read in evidence the judgment of the said United States circuit court of appeals affirming the said last-mentioned judgment, which was rendered on the 3rd day of January, A. D. 1899, and was in the words and figures following, to wit:

"And whereas, in the present term of November, in the year of our Lord, one thousand eight hundred and ninety-eight, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause, in respect to the writ of error sued out herein, be, and the same is, hereby affirmed, without prejudice to the writ of error now pending in this court in cause No. 783 between the same parties.

It is further ordered and adjudged that the plaintiff in error, The Atlantic Lumber Company, and the surety on the writ of error bond herein, The Fidelty & Deposit Company of Maryland, be condemned

to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

January 3rd, 1899."

And thereupon, the plaintiff proved by undisputed evidence that the said The Atlantic Lumber Company applied to the Supreme Court of the United States for leave to file a petition for a writ of certiorari from the said court to review the said judgment of the said circuit court of appeals, and by like undisputed evidence that the said Supreme Court denied leave to file such petition on or about the 22nd day of May, A. D. 1899.

And thereupon the plaintiff read in evidence two forthcoming bonds and two indemnity bonds, in the words and figures following, to wit:

THE ATLANTIC LUMBER COMPANY, Plaintiff,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant.

Know all men by these presents, That we, L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of New Jersey, as principal, and Charles L. Bucki and Frederika Bucki and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of Maryland,
71 and which has obtained a certificate under the laws of Florida authorizing it to do business as a surety company, under and by virtue of the laws of Florida, as sureties, are held and firmly bound unto the Atlantic Lumber Company, a corporation organized and existing under the laws of Florida, in the sum of one hundred thousand dollars, for the payment whereof well and truly to be made, the said L. Bucki & Son Lumber Company binds itself, its successors and assigns, and the said The Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, and the said Charles L. Bucki, and the said Frederika Bucki, bind themselves, their and each of their heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this the 4th day of November, A. D. 1897.

Now, the condition of this obligation is such that, whereas, the sheriff of Duval county, Florida, by virtue of a certain writ of attachment issued out of the circuit court of Florida in and for Duval county, in a certain cause then and therein pending, wherein the said The Atlantic Lumber Company was plaintiff and the said L. Bucki & Son Lumber Company was defendant, has levied upon the following property, to wit: 4,983,920 feet of sawn lumber and timber and 3,000,000 feet of round timber, not sawn, all of the value of fifty thousand dollars, fixed by the sheriff of Duval county, Florida, and the said L. Bucki & Son Lumber Company wishes to regain possession of the same. Now, if the said L. Bucki & Son Lumber Company shall have the said property forthcoming, and shall abide the final order of the circuit court of the United States for the southern district of Florida, to which the said action has been removed, and wherein said action

is now pending, then this obligation shall be null and void, otherwise to remain in full force and virtue.

THE L. BUCKI & SON LUMBER COMPANY,
[SEAL.] By CHARLES L. BUCKI, *President.*
CHARLES LLOYD BUCKI. [L. S.]
FREDERICA BUCKI, [L. S.]
By CHAS. L. BUCKI, *Att'y-in-Fact.*
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
[SEAL.] Per E. M. M. WARFIELD, *President.*

Attest: H. E. BOSLER, *Secretary.*

Taken and approved November 4th, 1897.
[SEAL.] N. B. BROWARD, *Sheriff.*

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

On this 30th day of Oct., A. D. 1897, before the subscriber,
72 a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and qualified, came Edwin Warfield, president, and H. E. Bosler, secretary, of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at the city of Baltimore, the day and year above written.

FRED. S. AXTELL, [SEAL.]
Notary Public.

THE ATLANTIC LUMBER COMPANY, Plaintiff,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant.

Know all men by these presents, that we, L. Bucki & Son Lumber Company, a corporation organized under the laws of New Jersey, as principal, and Charles L. Bucki, Fredericka Bucki, John M. Des Rochers, Colin H. Robertson, Philip Walter and Roderick G. Ross, as sureties, are held and firmly bound under the Atlantic Lumber Company, a corporation organized under the laws of the State of Florida, in the sum of twenty thousand ($20,000) dollars, for the pay-

ment whereof well and truly to be made, the said L. Bucki & Son Lumber Company binds itself and its successors and said sureties bind themselves, and each of them and their and each of their executors and administrators.

Signed and sealed this 9th day of October, 1897.

The condition of the foregoing obligation is such that, whereas, the said The Atlantic Lumber Company on the — day of October, 1897, sued out a certain writ of attachment in a certain suit pending in said court, wherein the said The Atlantic Lumber Company was plaintiff, and the said L. Bucki & Son Lumber Company was defendant, which said writ was levied upon certain property of the said defendant, to wit: one million two hundred and fifty thousand feet of yellow-pine merchantable lumber as the property of defendant.

Now, if the said L. Bucki & Son Lumber Company shall have forthcoming the said property so levied upon, and shall abide
73 the final order of the court, then this obligation shall be null and void, otherwise to remain in full force and virtue.

L. BUCKI & SON LUMBER COMPANY.
[SEAL.] CHAS. LLOYD, BUCKI, *Pres't.*
C. W. SIMMONS, *Sec'y.*
CHAS. L. BUCKI. [SEAL.]
FREDERICA BUCKI,
By CHAS. L. BUCKI, *Att'y-in-Fact.* [SEAL.]
JOHN M. DES ROCHERS. [SEAL.]
COLIN H. ROBERTSON. [SEAL.]
PHILIP WALTER. [SEAL.]
RODERICK G. ROSS. [SEAL.]

Taken and approved Oct. 11th, 1897.

N. B. B-OWARD, *Sheriff.*

Know all men by these presents, that we, the L. Bucki & Son Lumber Company, Charles L. Bucki, Frederica Bucki, J. M. Des Rochers, Roderick G. Ross, Colin H. Robertson and Philip Walter, are held and firmly bound unto Napoleon B. Broward in the sum of twenty thousand dollars, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs and representatives respectively.

Signed and sealed this 9th day of October, 1897.

The condition of the foregoing obligation is such that, whereas, said Broward is sheriff of said county of Duval and State of Florida, and as such sheriff has received certain writs of attachment in the several suits now pending against the L. Bucki & Son Lumber Company, and as such sheriff has taken possession of certain lumber as the property of said company, and is about to relinquish such possession and turn over to certain vessel or vessels in the St. Johns river certain portions of said lumber.

Now, therefore, if the said lumber, or any part thereof is turned over to said vessel or vessels, and the said Broward is fully paid and indemnified for any and all loss he may suffer because of his relin-

quishing possession as aforesaid, then this obligation is to be void, else to remain in full force and virtue.

THE L. BUCKI & SON LUMBER COMPANY,
By CHAS. LLOYD BUCKI, *Pres.*
CHAS. L. BUCKI. [SEAL.]
FREDERICA BUCKI,
By CHAS. L. BUCKI, [SEAL.]
Att'y-in-Fact.
J. M. DES ROCHERS. [SEAL.]
RODERICK G. ROSS. [SEAL.]
COLIN H. ROBERTSON. [SEAL.]
PHILIP WALTER. [SEAL.]

74 Know all men by these presents, that we, the L. Bucki & Son Lumber Company, Charles L. Bucki, Frederica Bucki, J. M. Des Rochers, Roderick G. Ross, Colin H. Robertson and Philip Walter, are held and firmly bound unto Napoleon B. Broward in the sum of thirty-six hundred dollars, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs and representatives respectively.

Signed and sealed this 9th day of October, A. D. 1897.

The condition of the foregoing obligation is such that, whereas, said Broward is sheriff of said county of Duval and State of Florida, and as such sheriff has received certain writs of attachment in the several suits now pending against the L. Bucki & Son Lumber Company, and as such sheriff has taken possession of certain lumber as the property of said company, and is about to relinquish such possession and turn over to certain vessel or vessels in the St. Johns river certain portions of said lumber.

Now, therefore, if the said lumber, or any part thereof is turned over to said vessel or vessels, and the said Broward is fully paid and indemnified for any and all loss he may suffer because of his relinquishing possession as aforesaid, then this obligation is to be void, else to remain in full force and virtue.

THE L. BUCKI & SON LUMBER COMPANY,
By CHAS. LLOYD BUCKI, *Pres.*
CHAS. L. BUCKI. [SEAL.]
FREDERICA BUCKI,
By CHAS. L. BUCKI, [SEAL.]
Att'y-in-Fact.
J. M. DES ROCHERS. [SEAL.]
RODERICK G. ROSS. [SEAL.]
COLIN H. ROBERTSON. [SEAL.]
PHILIP WALTER. [SEAL.]

Plaintiff then read in evidence a mortgage given by plaintiff to indemnify the defendant as surety upon one of the said forthcoming bonds, and a release of the said mortgage, which said mortgage and the said release were in the words and figures following to wit:

This indenture of mortgage, made and entered into on this 4th day of November, eighteen hundred and ninety-seven, by and between the L. Bucki & Son Lumber Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the said State, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the party of the second part becoming a surety
75 upon a bond to be given by the party of the first part for the forthcoming of property in a suit at law brought be (by) the Atlantic Lumber Company, a corporation organized under the laws of Florida, against the said party of the first part in the circuit court of Duval county, State of Florida, and removed from the court and now pending in the circuit court of the United States for the southern district of Florida, which said bond is to be in the penal sum of one hundred thousand dollars, conditioned to have the property which has been levied by a writ of attachment, issued in said action in the said State court before its removal to the Federal court forthcoming and abide the final order of the court, and in further consideration of the sum of one dollar in hand paid, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, sell, alien, remise, convey and confirm unto the said party of the second part, its successors and assigns, forever, all that certain lot, tract and parcel of land situate, lying and being in the city of Jacksonville, county of Duval, State of Florida, and described as follows, to wit:

All that certain lot, tract or parcel of land situate, lying and being on the west bank River St. Johns, about two miles east of the city of Jacksonville, in the county of Duval, and State of Florida, and known and described as follows, to wit: Beginning at a point indicated by a cedar post on the west bank of the St. Johns river, where a fence now stands, on the north side of the land owned by Advnigole S. Welch, running on a line with said fence westward until it intersects the east branch of Deer creek; thence by course of said creek to St. Johns river; thence along the river to a place of beginning, containing about ten (10) acres, more or less. Being the same lands that were conveyed to Sarah B. Hills by Charles A. Fairchilds by deed dated the twenty-fourth day of May, 1879, and recorded in the office of the clerk of the circuit court of the county of Duval, on the twenty-fourth day of May, A. D. 1897, in Book "E" sp. m. w. on page 430.

And all the saw-mills located on the said described lands, and all the booms, pens located in the said described lands, and all the engines, boilers, machinery, implements, articles and tools of every nature and kind attached to the said saw-mills and used in the operation of the said saw-mills, or any part thereof; and also all the planing mills, dry kilns, located on the said described lands, and all the engines, machinery, implements, articles and tools of every nature and kind attached to the said planing mills and dry kilns, or used in the operation of the same. And also all of the lumber and tim-

ber in the yards, attached to the said mill property of the
76 party of the first part, which may be manufactured from logs from time to time, and which may be remaining from time to time in the said yards, and also all the logs which may be hereafter remaining in the booms and boom pens aforesaid of the party of the first part. It being expressly understood by these presents that it is the intention of the said party of the first part to give a mortgage lien upon all of the mill plant, and every part thereof, of the party of the first part, located on the above-described lands and premises, and also upon all the said lumber and timber and logs that may, from time to time, be in and upon the said yards and boom pen and land and premises aforesaid.

It is also expressly understood that it is not the intention of this instrument to prevent the party of the first part from operating the said saw-mills and planing mills and dry kilns in the manufacture of and preparation of lumber and timber for market, nor to prevent party of the first part from selling, disposing of and shipping said lumber and timber in the ordinary course of the business of the said party of the first part as a manufacturer and seller of lumber and timber, but an accurate — of said lumber, timber and logs shall be kept by the party of the first part, and the proceeds thereof, from time to time, less the actual operating expenses of said mill, shall be subject to the lien of this mortgage, or invested in logs to take the place of those sawn, which shall become encumbered by this lien.

And this indenture of mortgage is made upon the following express conditions and provisions, to wit: That this instrument is made and executed for the express purpose of securing the said party of the second part, and indemnifying the said party of the second part against the payment of any moneys, costs, expenses or damages it, the said party of the second part, may have to pay or incur in consequence of and by reason of its obligations and liabilities as surety upon the bond above described and mentioned. And in the event that the said party of the first part shall pay, discharge and satisfy all moneys, claims and demands that can or may be made upon it, or upon the said party of the second part, by reason of or in consequence of any obligations or liabilities made or created or incurred against either of the said parties, by reason of and in consequence of the execution and delivery of the said bond by the parties named as obligors therein, then in that event, this obligation is to be null and void; otherwise to remain in full force and effect. Or, in event that the said bond shall be cancelled and discharged by order of the said courts, or either of them, or of any other court, then this indenture of mortgage shall become null and void; otherwise to remain in full force and effect.

77 And the said party of the first part, for itself, successors and assigns, the above-described and hereby-granted premises, and every part and parcel thereof, with the appurtenances, unto said party of the second part its successors and assigns, against the said parties of the first part, its successors and assigns, and against all and every person or persons whomsoever, lawfully claiming, or

to claim, the same, shall and will warrant, and by these presents forever defend.

It is further stipulated and agreed that this indenture of mortgage is executed by the party of the first part, by virtue of and under the authority of a resolution of the stockholders of the said L. Bucki & Son Lumber Company, passed and adopted at an annual meeting of the said stockholders in an office of the said company, at the corner of Greene and Grand streets, in the city of Jersey City, New Jersey, on the twentieth day of October, 1897, a copy of which said resolution, under the seal of the said party of the first part, is hereby attached and marked "Schedule A," and made a part of this indenture of mortgage.

In witness whereof, the said party of the first part has signed its name by its president, and caused the seal of said party of the first part to be attached hereto, duly attested.

L. BUCKI & SON LUMBER CO.,
By CHAS. LLOYD BUCKI, *Pres.* [SEAL.]

Signed, sealed and delivered in the presence of us as witnesses:

J. M. DES ROCHERS,
W. C. COX.

STATE OF FLORIDA, }
County of Duval. }

I, Maurice H. Slager, a notary public in and for said State and county, do hereby certify, unto all whom it may concern, that Charles L. Bucki, to me well known as president of the first party of the foregoing instrument, and that the name of the party of the first part was signed to said instrument by him, the said Charles L. Bucki, and the seal of the said party of the first part was duly attached to the said instrument in his presence, the execution of said mortgage in the manner aforesaid having been duly authorized.

Wherefore, it is prayed that the said indenture of mortgage may be recorded.

[SEAL.] MAURICE H. SLAGER,
Notary Public.

Nov. 4th, 1897.

STATE OF FLORIDA, }
County of Duval. }

Be it remembered, that on this 4th day of November,
78 A. D. 1897, I, clerk of the circuit court in and for the said county, have duly recorded the foregoing instrument in the public records of said county.

In witness hereof, I have hereunto set my hand and seal of said court, this day and year above written.

[SEAL.] P. D. CASSIDEY, *Clerk*,
By H. J. CASSIDEY, *D. C.*

The release, made this 5th day of June, in the year 1899, by the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland;

Whereas, by mortgage bearing date on the 4th day of November, 1897, the L. Bucki & Son Lumber Company, a corporation organized under the laws of the State of New Jersey, did grant and convey unto the Fidelity and Deposit Company of Maryland, its successors and assigns, by way of mortgage, the land and property in said mortgage described, for the purpose of securing said Fidelity and Deposit Company of Maryland as surety upon a bond given for the forthcoming of property in a suit at law, instituted by the Atlantic Lumber Company against the L. Bucki & Son Lumber Company in the circuit court of Duval county, State of Florida, and removed from that court into the United States circuit court for the southern district of Florida, said bond being in the penalty of one hundred thousand dollars, as by reference to said mortgage recorded in the public records of Duval county, Florida, Book 60, page 197, will more fully appear.

And whereas, said suit at law has resulted in favor of the L. Bucki & Son Lumber Company, and there is no further liability on the said forthcoming bond executed by the said Fidelity and Deposit Company of Maryland, wherefore this instrument is executed.

Now, therefore, this release witnesseth, that in consideration of the premises and the sum of one dollar in hand, the said Fidelity & Deposit Company of Maryland does hereby grant and release unto the said L. Bucki & Son Lumber Company all of that lot of land, premises and property mentioned and described in said mortgage, to have and to hold the same unto the said L. Bucki & Son Lumber Company, its successors and assigns, in the same manner as if the said mortgage had never been executed.

In witness whereof, the said Fidelity and Deposit Company of Maryland has caused this release to be signed by its president
79 and its secretary, and its corporate seal attached the day and year first above written.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

[SEAL.] E. M. M. WARFIELD, *President.*

Attest: H. E. BOSLER, *Secretary.*

STATE OF MARYLAND, *City of Baltimore,* } ss:

On this 5th day of June, A. D. 1899, before me, the subscriber, a notary public of the State of Maryland in and for the city of Baltimore, duly commissioned and qualified, came Edwin Warfield, president, and H. E. Bosler, secretary, of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed the preceding instrument, and they each acknowledge the execution of the same, and being by me duly sworn, severally and each for himself, deposeth

and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the proceedings (preceding) instrument is the corporate seal of the company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at the city of Baltimore, the day and year first above written.

FRED S. AXTELL, [SEAL.]
Notary Public.

And thereupon Charles L. Bucki, the president of the plaintiff, testified that it was necessary to give said mortgage in order to obtain the said surety company as a surety upon the said bond, and that he paid the said surety company seven hundred and fifty dollars in addition to the giving of the said mortgage to obtain the said surety upon the said bond.

And to further maintain the issues on its part, the plaintiff adduced evidence of its officers and agents establishing that its mill plant levied upon by the said writs of attachment, located upon the land mentioned in the writs, consisted of a two-deck saw-mill with machinery for operating two circular saws; five planing mills, two dry kilns, docks and wharves extending from the said mills into the St. Johns river; sheds and outbuildings, an elevated reservoir with a capacity of six thousand gallons of water and connected with water pipes and hydrants and hose for extinguishing fires; also a boom with a capacity of six million feet of logs, board measure, made at the mouth of a creek by piling to keep the logs from floating into the St. Johns river; with (which) evidence was not disputed by the defendant.

80 Plaintiff also adduced evidence established that it had been operating its said mills and had been carrying on the business of manufacturing and selling yellow-pine timber and lumber for the period of four years and a half next prior to the levy of the said writs of attachment; that the average annual output of the said mills and business was between twenty-eight and thirty-two million feet for the said period, and that the monthly output of the said mills and business during such period of time was about two and one-half million feet of timber and lumber, of which about two-thirds was timber and one-third first and second class boards. Plaintiff also adduced evidence establishing that on the first day of October, A. D. 1897, its said mills were running at about their full capacity.

To further maintain the issue on its part, the plaintiff, over the repeated objections of the defendant, which were overruled, put in evidence its books and the testimony of the officers of the plaintiff, tending to establish that for the period of nine or twelve months next preceding the first day of October aforesaid, the net value of the use of its said mills and of its said business, or the net profits of its said business was a considerable sum of money, to wit: five

thousand dollars per month on an average for the said period; and that much the greater part of the product of the said mills was sold in northern markets, to wit: Baltimore, New York and Boston.

The plaintiff also adduced evidence establishing that on October 1st, aforesaid, it had orders and contracts on hand for a large quantity of timber and lumber which had not been sawn, and that it had in its boom at said mills, three million feet board measure of logs, ready to be manufactured.

Plaintiff also adduced testimony tending to prove that at the time the said attachments were levied the prices of yellow-pine timber had commenced to improve and that a part of the year of 1898, such prices were higher than in 1897, and that during the year 1899, such prices were higher than during the year 1898.

Plaintiff also adduced evidence that the par value of its capital stock was two hundred and fifty thousand dollars; that the plaintiff's president, Charles L. Bucki, and his mother, Frederica Bucki, owned more than four-fifths of said stock; that for several years prior to the organization of the plaintiff company, which was in the fall 1892, the said Charles L. Bucki and Frederica Bucki were manufacturing yellow-pine timber and lumber at Ellaville, Madison county, Florida, ninety miles west of Jacksonville, under the firm name of L. Bucki & Son, and that the said Charles L. Bucki and J. G. Heagey, its mill superintendent, had had extensive ex-
81 perience in logging, that is, in cutting the standing trees and delivering them into saw-mill boom pens, both by mule and team, water aud railroad, including the construction of temporary railroads, connecting with main or chartered lines of railroads or water, and were familiar with the costs of the construction of such temporary roads; the rolling stock used thereon, and the cost of camp equipment, and of cutting and delivering such logs into the boom pens. And the plaintiff also adduced evidence tending to establish that the said L. Bucki & Son on the first day of October, 1897, aforesaid, owned about thirty-three miles of railroad iron weighing from thirty to thirty-five pounds per yard, about fifty-two car trucks, constructed to transport logs on, and three railroad locomotives, all of which were at said Ellaville, Florida, and evidence tending to establish that such trucks and engines, with repairs, and said iron rails would have been soon after October 1st, aforesaid, available for logging purposes as aforesaid, and obtainable by the plaintiff.

And there was also testimony tending to establish that said cars were in very bad condition; that they could not be repaired profitably, so as to be fit for use, and that the engines also were in a bad condition.

The plaintiff also adduces evidence tending to establish that for two years and upwards after October 1st, 1897, there was timber available and obtainable to supply its said mills with logs; that one tract of land known as the Frank Russel tract, containing about thirteen million feet of merchantable standing timber and upwards, located about ten miles west from plaintiff's said mills, and but a short distance from the Florida Central & Peninsular railroad and

but a short distance from water communication with said mill, could have been purchased in October, A. D. 1897, for the sum of from twelve to fifteen thousand dollars; that another tract of land located near Starke, in Bradford county, Florida, containing about 11,600 acres, known as the Payne-Cochrane tract, could have been purchased in October aforesaid for the sum of five dollars per acre, and which land was represented to contain five thousand feet per acre, and that the said The Atlantic Lumber Company were logging from said tract at the time of said trial, and had been for some time prior thereto.

That another tract of land located near Paradise, in —— county, Fla., through which a railroad ran, was in the market for sale in October, A. D. 1897; that it contained about thirteen thousand acres, and was offered at three dollars per acre and contained about two thousand feet to the acre of merchantable timber; and there were other tracts containing timber in large quantities,
82 located on or near the St. Johns river and Orange creek, which were available to the Jacksonville market. And there was testimony tending to establish that a great part of Florida east of the Suwanee river and for a distance of one hundred miles south of Jacksonville contained yellow-pine timber.

And to further maintain the issue on the part of the plaintiff, it examined HENRY CLARK, a witness, who testified that he was owner of a saw-mill in Jacksonville, with a capacity of about 4,000 per day, and had been engaged in manufacturing yellow-pine lumber in Jacksonville for over twenty-five years; that in the year 1897 he obtained a considerable portion of logs for his mill by buying logs on the St. Johns river; that the prices of lumber were some higher in 1898 than in 1897, and considerably higher in 1899 than in 1898.

Evidence was adduced tending to prove that the plaintiff never refused to pay for logs delivered prior to October 1st, 1897, and that at about twelve o'clock noon of that day, The Atlantic Lumber Company requested at plaintiff's office in New York, the sum of twenty-five hundred dollars on account of logs delivered, and that the plaintiff declined to pay that or any sum on that day, and there was evidence tending to prove that C. Bucki, president of the plaintiff company, stated to J. D. Bucki that the company did not owe the defendant company anything that day, but that no such denial was made to any officers of the defendant company.

ARTHUR MEIGS, a witness on the behalf of the defendant, testified that he was the general manager of the Atlantic Lumber Company on October 1st, 1897, and for a long time prior to that, and that prior to June, 1897, the Atlantic Lumber Company had been accepting the negotiable paper of the plaintiff for logs sold, and that the National Bank of Jacksonville, Florida, had been accustomed to discount the said paper, but that subsequent to that month the paper of the plaintiff went to protest at frequent intervals, and finally in August, 1897, upon the protesting of the draft for $5,340.00, dated August 16th, 1897, the National Bank of Jacksonville, Florida,

refused to discount any more of the paper of the plaintiff and that it made it necessary for the Atlantic Lumber Company to demand cash from the plaintiff in settlement of logs; that the plaintiff failed to meet its log payments on the 1st of September, 1897, and between that day and the 15th of September, 1897, the plaintiff was in default of its payments for logs to the amount of about $16,000.00, including the draft for $5,340.00; that he was in New York a large
83 part of the month of September 1897, and that he and the president of the company were making repeated demands upon the plaintiff for the payment of money due for logs, including the draft for $5,340.00 held by the National Bank of Jacksonville, and that plaintiff at no time prior to the institution of the attachment suit disputed their liability to pay for the logs, according to the contract price, and made repeated promises to the defendant to pay them the amount due for logs.

That on October 1st, 1897, he and Mr. Ambler called upon Mr. Charles L. Bucki, president of the company, and requested payment of the amount due them, and informed the said L. Bucki that they would accept $2,500.00 on that day and wait a while for the payment of the residue, and that the said Bucki told them that they were unable to pay them $2,500.00 on that day unless Mr. J. D. Bucki, a stockholder of the company who was then and there present, and who was reputed to be a man of means, would lend that amount for the plaintiff, and that the said J. D. Bucki refused in his presence to lend the plaintiff $2,500.00 and that no complaint of any kind was made in regard to the logs, nor was any objection made to paying the amount due beyond the fact of plaintiff's being unable to pay.

That the $2,000 advanced included in the draft for $5,340.00 was made in consequence of the Atlantic Lumber Company having an unsettled claim against the plaintiff on another account than for logs, which amounted to about $1,800, and that this advance had been made at intervals by the plaintiff to the Atlantic Lumber Company for several years, and that he was aware of several efforts which had been made by H. W. Simmons in September, 1897, to raise money from New York banks for the plaintiff, which had failed.

And the said Meigs testified that he had had practical experience of about eight years in the logging business, and that it would have required an investment of from fifty to seventy-five thousand dollars for a logging plant, trucks, locomotive, rails, mules, carts, etc., in order to have enabled the plaintiff to prepare for getting out logs to the amount of 2,000,000 feet per month.

D. G. AMBLER, a witness in behalf of the plaintiff, testified that he was president of the Atlantic Lumber Company on October 1st, 1897, and had been such since its organization, and that he was frequently in New York during the summer of 1897, and made fre-
84 quent calls at the plaintiff's office for the purpose of securing payment of money due the Atlantic Lumber Company for logs furnished under contract, and that he on several occasions assisted Mr. H. W. Simmons to raise money for the plaintiff, and in September, 1897, after the plaintiff had failed to raise money at

its own banks, he endeavored to raise money upon the plaintiff's paper at his own bank, in that city upon the First National Bank of Tampa stock as collateral security, and that he had never theretofore had difficulty in borrowing money from his Bank of Tampa upon this collateral. But that they refused to lend money upon the plaintiff's note secured by this collateral. That at no time on or prior to October 1st, 1897, had the plaintiff disputed its liability to pay the full contract price to the Atlantic Lumber Company for logs delivered, and that during the latter part of the month of September, repeated requests were made upon plaintiff to pay the amount due, and they always promised to pay as soon as funds could be obtained. That on October 1st, 1897, he went in company with Mr. Meigs to the office of the plaintiff in New York city to obtain payment for the amount due for logs and that Mr. Meigs in his presence represented to Charles L. Bucki, the president of the plaintiff that if the sum of $2,500 was paid them on that day they would wait for a while for the remainder of the amount then due for logs, but that the said Bucki stated that they were unable to pay this amount unless Mr. J. D. Bucki, who was present, and who was a stockholder would lend that amount to the plaintiff, the said J. D. Bucki expressed his willingness to do so if C. L. Bucki, the president of said company, said so, but this, C. L. Bucki refused to do and that no objection was made to paying the amount due for logs on that day beyond the fact of the defendant's inability to pay.

During the trial of this action, defendant's counsel announced that the Atlantic Lumber Company would have to pay whatever judgment was recovered against the defendant and the evidence established that Daniel G. Ambler was the president of the Atlantic Lumber Company on October 1st, 1897, and that Arthur Meigs was then and still is the general manager of said company, and Richard H. Liggett, the counsel who made said announcement was then and still is the secretary of the said company, and that the said Meigs and Liggett were at the time of the trial, directors of said company.

And there was evidence tending to establish that on October 1st, 1897, there was pending negotiation for a contract between plaintiff company *one* Sheppard, Morse & Co., of Boston, Mass.; that said
85 contract had been signed by plaintiff and delivered to said Sheppard, Morse & Co., and the promissory notes of plaintiff had been delivered to said company to the amount of $25,000 on or before October 1st, 1897; that by the terms of the said contract, *the* Sheppard, Morse & Co., were to loan plaintiff $25,000 and take plaintiff's first-class boards then in plaintiff's yards at Jacksonville in payment for such loans, the price of such boards to be credited on the said loan as fast as they were received by said Sheppard, Morse & Co.; Sheppard, Morse & Co. to have a lien on plaintiff's mill properties and said boards until said loan was paid; that said boards had been marked with the initials of said company; and that $15,000 of such loan had been promised to be sent to New York city to plaintiff not later than the 2nd day of October, in said year. And there was further evidence tending to show that said S. M. & Co., had notice of a logger's lien in behalf of the Atlantic Lumber

Co., upon the logs and lumber contracted for which they insisted upon being released before completing the contract; but that the president of the A. L. Co., was never informed of the objection of the execution of the contract nor was he requested to release such lien and there was evidence tending to prove that the said writs of attachment prevented the completion of said negotiation and said loan and the performance of said contract.

And the evidence was adduced and not disputed that soon after such attachments were issued, the said contract and notes were cancelled and that no lumber was delivered under it.

And the testimony tended to prove that if the said contract for the said loan had been consummated and carried out, Sheppard, Morse & Co., would have purchased of plaintiff by the terms of the said contract 1,000,000 feet of boards thereafter to be manufactured (not including the boards to be delivered to pay such loan) with the right at the option of the said company to take 2,000,000 feet more of boards at the then existing market price.

The plaintiff adduced evidence establishing that the National Bank of Jacksonville after these attachments were levied received and discounted two negotiable obligations of the plaintiff to the amount of eleven hundred dollars, at the request of E. Schwarb, drawee of said drafts, that the said obligations were not paid, and were part of the amount for which the bank levied an attachment 28th December, 1897, and were afterwards paid May, 1898.

And the evidence established that the Atlantic Lumber Company was considerably indebted to the said bank on October 1st, 1897, for some time previous thereto and subsequent thereto.

Evidence was adduced by the defendant that Ernest Schwaab, in the latter part of 1898, recovered a judgment for about $2,000
86 against plaintiff on an indebtedness contracted after these attachments were levied: and that an execution issued on said judgment, the saw-mill plant of the plaintiff was sold and purchased by the said Henry Weiler, and that the amount bid by the said Weiler was about the sum due on the said execution.

The defendant produced as a witness JOHN N. C. STOCKTON, who testified that on or about February 22nd, he leased the plaintiff's mill for the period of one year from that day, at a rental of one thousand dollars per month, and that he paid the rent to said Henry Weiler, on account of the indebtedness of the plaintiff to the said Weiler; that he operated the mill but a small portion of the year, and sawed only about six million feet of lumber during the year; that he made no profit by operating said mill, and that Charles L. Bucki, loaned, or advanced to him about ten thousand dollars of security to be used in carrying on the said saw-mill business. That said Stockton testified that he felt confident that such lease was executed by the plaintiff company, but that after search for it, he had been unable to find such lease.

The said CHARLES L. BUCKI in behalf of plaintiff testified that he individually entered into a written contract with the said Stockton,

whereby the said Stockton was to operate the said mill plant, and produced said written contract and testified that his and the said Stockton's signatures were their genuine signatures to such contract, and the plaintiff then offered in evidence the said written contract which is in the words and figures following, to wit:

Copy.

Whereas, the L. Bucki & Son Lumber Company, a corporation organized under the laws of the State of New Jersey, is at present, by reason of attachment suits brought against it, claiming damages in large amounts, financially embarrassed, and unable successfully to carry on its business; and,

Whereas, Charles L. Bucki owns and controls about two thousand one hundred and fifty (2,150) shares, out of a total of two thousand five hundred (2,500) shares of the capital stock of the L. Bucki & Son Lumber Company, and is therefore vitally interested in the financial success of said company; and,

Whereas, Charles L. Bucki deems it necessary to the protection of his personal interests in the L. Bucki & Son Lumber Company that the services of John N. C. Stockton shall be secured to him and to the L. Bucki & Son Lumber Co. for a period of five years; and,

87 Whereas, John N. C. Stockton has agreed to give his services to the said Charles L. Bucki and to the said L. Bucki & Son Lumber Company in the clearing away of the financial difficulties of said company, and in the successful operation and management of their business affairs in Florida;

Now, therefore, this agreement entered into this 22nd day of February, A. D. 1898, by and between Charles L. Bucki of the first part, and hereinafter designated as Bucki, and John N. C. Stockton of the second part, hereinafter designated as Stockton, both of Jacksonville, Florida, witnesseth:

1st. That Stockton agrees that he will give his services, time and attention to the business affairs of Bucki and of the L. Bucki & Son Lumber Company from the — day of ——, A. D. 1898, for the full term and period of five years thereafter for the consideration and upon the terms and conditions herein stated; it being understood and agreed that he, Stockton, shall have the right to retain, if he so desires, his position as president of the National Bank of the State of Florida, and give to that position such of his time and services as may be necessary, provided such duties do not conflict with his duties under this contract.

2nd. That Bucki has contracted for and agrees to accept the services of the said Stockton for the said period of five years at the agreed consideration and upon the terms and conditions herein stated, and to pay or to cause to be paid to Stockton, as compensation for his services, the sum of five thousand ($5,000) dollars per annum, payable in equal monthly instalments at the end of each month, as a guaranteed fixed salary, and in addition thereto, as a contingent compensation such other and further sums as shall equal one-fourth of the net profits of the business done, after allowing to

Bucki out of the total net profits an annual salary of five thousand ($5,000) dollars.

3rd. That Bucki agrees to secure from the L. Bucki & Son Lumber Company, a lease of that company's mill property in the city of Jacksonville, Florida, to Stockton, for the period of one year at the annual rental of twelve thousand ($12,000.) dollars per annum, and to purchase and procure from said company a conveyance to Stockton of all the logs belonging to the company now in the log boom of the company's mills, the logs to be paid for at their fair market price, the said Stockton to pay for said logs with interest on the price of said logs, out of the profits made by him under the lease herein provided for as soon as he conveniently can without embarrassment to his business; and the said Bucki further agrees to provide the said Stockton with certain bills receivable (more
88 particularly described hereinafter), and with the sum of six thousand ($6,000) dollars at the time and upon the terms and conditions and for the purposes set forth in paragraph 11 of this agreement.

4th. That all other available assets of the L. Bucki & Son Lumber Company, including all bonds that have been or may be issued by the company, and secured by mortgages on the mill property and real estate, shall be used in the payment of the indebtedness of the company, so as to facilitate the quickest possible clearing off of the indebtedness of the L. Bucki & Son Lumber Company.

5th. That Stockton shall be given and shall take charge of the financial affairs of the L. Bucki & Son Lumber Company with a view to the clearing away as fast as possible of the financial embarrassments now surrounding the company.

6th. That for the period of one year the lumber business as heretofore conducted by the L. Bucki & Son Lumber Company shall be carried on by Stockton in his name, but for the benefit of Stockton and Bucki, the gross receipts from the business to be applied, first, to the payment of the operating expenses, and the remainder, if any there be, towards the payment of Stockton at the fixed salary of five thousand dollars per annum, and the remainder thereafter, if there be any, to be paid on account of the rent of the mill; and the remainder thereafter, if any there be, after the payment to Charles L. Bucki of a salary of five thousand dollars per annum, shall be divided between Stockton and Bucki in the proportion of one-fourth to Stockton and three-fourths to Bucki, provided orders can be obtained at remunerative prices.

7th. That Stockton agrees to use one-half of his share of the profits (his contingent compensation), in the purchase of shares of the capital stock of the L. Bucki & Son Lumber Company now owned by persons other than Charles L. Bucki and of Charles L. Bucki until he owns one-quarter of the whole capital stock of the company, provided such stock can be purchased by him at its reasonable cash value.

8th. That Bucki agrees that at the end of one year from date he will procure the entering into of a contract by the L. Bucki and Son Lumber Company, with Stockton, for the employment of Stockton

as secretary and treasurer, and as Florida manager of its affairs for the unexpired remainder of the five years covered by this contract, at the compensation herein provided, five thousand dollars fixed guaranteed salary, and a contingent compensation equal to one-fourth of the net profits of the company, all dividends paid on stock belonging to Stockton to be considered part of such profits—the profits to be determined after deducting from the total profits
89 the fixed salaries of five thousand dollars to be paid to Stockton and Bucki each; and Stockton agrees that he will thereupon enter into a contract with the L. Bucki & Son Lumber Company for his services for the above-mentioned compensation, and that he will close up the business operated by him under the lease heretofore mentioned, and after paying off all the liabilities so far as the assets will go, he will distribute any net profits remaining under the said lease as hereinbefore set forth.

9th. That Bucki hereby guarantees Stockton against personal loss while operating the business in his, Stockton's, name, reserving the right at any time that the business may not be profitable, to require the closing out of the business on reasonable notice, and after a full and complete release shall have been given to Stockton by the L. Bucki & Son Lumber Company from all the rent to accrue under the aforesaid lease.

10th. That it is mutually understood and agreed that the payment to Stockton by any firm or corporation engaged in the lumber business in which Bucki is interested, of the salary or other compensation hereinbefore specified, or any part of such salary or compensation, shall, for the purpose of this contract, be held and considered as a compliance to that extent with the provisions of, and as a payment under, this contract of the monies to be paid Stockton.

11th. That Bucki assigns and transfers to Stockton the right to collect through J. D. Bucki from Sabel Brothers $6,000.00 approximately, the exact amount being unknown, to become due him from the sale of certain steel and iron railroad rails owned by Bucki situate in Suwannee county, Florida, and also the following-described bills receivable, to wit:

Kelly, Hough & Co., due Jan'y 12th, 1899	$1548.00
Kelly, Hough & Co., due Jan'y 12th, 1900	1548.00
D. L. Byrd, due January 20th, 1899	125.00
D. L. Byrd, due January 20th, 1900	125.00
Beasley & Millinor, due November 1st, 1898	1000.00
Beasley & Millinor, due November 1st, 1899	1000.00

with the privilege to retain, sell, transfer or hypothecate any or all of said sums and bills, and to use the proceeds of the same as a working capital in said business, and also to protect him, Stockton, against loss on account of operating expenses, and rent of said mill, and failure of said business to pay him, Stockton, the salary guaranteed him by Bucki, and to make good the guarantee of Bucki contained in paragraph 9 of this agreement—provided, however, that if
90 Stockton collects the said sum of $6,000.00 and receives the above-mentioned bills receivable that on demand of Bucki

within three months from date he will repay to Bucki three thousand dollars of said money. And further, that all sums so collected by Stockton, or obtained by sale or hypothecation of said bills receivable, shall be repaid to Bucki with eight per cent. interest out of the profits of said business, if there be any, under the lease (the operating expenses, rent and Stockton's salary having been paid); or if said bills or any of them have not been sold or hypothecated or collected, that the same shall be returned. It being understood and hereby expressly stipulated that if Stockton shall not have made out of said business sufficient to pay all operating expenses, all charges for rent and his salary, then he shall not be required to repay said money or to return said bills, but may retain the whole or such part thereof as may be necessary to pay all operating expenses, rent or salary remaining due, and for which Stockton may become liable.

In witness whereof, the parties hereto have executed this contract in duplicate, this the 18th day of March, A. D. 1898.

(Signed) CHARLES LLOYD BUCKI.
JOHN N. C. STOCKTON.

Witnesses:
J. M. DESROCHERS.
G. D. GAY.

And the court excluded the said contract as being immaterial to any issue in this suit, and refused to allow the same to be read to the jury after defendant withdrew all objections to its being read in evidence, to which refusal of the court to permit the said contract to be read in evidence, the plaintiff then and there and before the jury retired, excepted on the ground that it was the best evidence of the true relations between the said plaintiff, said Bucki and the said Stockton, in reference to the operating of the said mill plant in 1898, and of the amount of rent agreed to be paid and tended to support the testimony of the said Bucki; that no lease was executed. The said Bucki further testified that he had no recollection that any lease was executed to said Stockton by the plaintiff, and was unable to find any such lease, and that he put all the capital in the business of operating said mill plant during the said year, that the said mill plant under the said Stockton's management was operated at a great loss; and that the money and funds which were paid by Stockton to the said Weiler on account of such rent was his, Bucki's money, and that to the extent such payments to Weiler reduced the debt
91 of plaintiff to him, to the same extent it increased the debt of plaintiff to him, Bucki. The said Bucki further testified that he was in the city of Washington most of the time between February 22nd, 1898, and February 22nd, 1899.

The defendant took the deposition of ALFRED J. ROTHERO, in New York, to be used in this case, and said Rothero testified that he was in the employ of and book-keeper for the Degnon-McLean Construction Company; and the plaintiff read in evidence so much of said deposition as — in the words and figures following, to wit

Q. Have you in your possession as book-keeper of the Degnon-McLean Construction Company a copy of the statement of the bill rendered by your company to the L. Bucki & Son Lumber Company, on account of the loss sustained by it through the failure of the L. Bucki & Son Lumber Company to perform its contract with the Degnon-McLean Construction Company?

A. Yes, sir.

Q. Have you personal knowledge of that account being made up and rendered to the L. Bucki & Son Lumber Company?

A. I made it up.

Counsel for defendant produces said statement before the notary and offers the same in evidence, and a true copy thereof is incorporated in the testimony, subject to objections:

Messers. L. Bucki & Son Lumber Company, 11 Broadway, New York city.

Nov.	3.	To excess price on 3,540 feet yellow pine, at $7.50	$26.55
"	6.	" excess price on 3,283 feet yellow pine, at $7.50	24.62
"	5.	" excess price on 19,376 feet yellow pine, at $7.50	145.32
"	11.	" excess price on 14,034 feet yellow pine, at $7.50	135.25
"	9.	" excess price on 9,036 feet yellow pine, at $7.50	67.78
Dec.	16.	" excess price on 256,578 yellow pine, $6.50	1,667.75
		" labor on account of defective dressing, 1,984,100 at $1	1,984.10
		" allowance for account waste on material bought from stock	500.00
			$4,521.37

92 Q. Will you please state whether your company has ever rendered and made claim against the L. Bucki & Son Lumber Company for any other allowance than those specified in that statement?

A. No, sir; we have not.

Q. As I understand it, the dates specified in that statement offset the various amounts, and represent the dates upon which such excess prices were paid?

A. No, not entirely, sir. The statement that you would take from the ledger here, of the account with L. Bucki & Son Lumber Company, would be more authentic than that, because each one of those items is the summary of two or three of these.

Q. Can you produce the account?

A. Yes, sir.

Witness produced the account.

Counsel for defendant offers the ledger account produced by the witness in evidence, and the witness here gives a detailed statement of the amount of each of the said items of excess prices, and the dates when the said amounts were expended. The witness explains that the dates upon which such charges were made are the dates when the Degnon-McLean Construction Company were obliged to purchase lumber from other sources to fill out the orders which Bucki had failed to ship:

Nov. 3, $26.55; Nov. 6, $24.62; Nov. 5, $145.32; Nov. 11, $105.25; Nov. 9, $67.78; Dec. 21, $324.64; Dec. 29, $156.15; Jan. 13, 1898, $315.49; Jan. 17, $857.75; Jan. 25, $695.45; Jan. 31, $42.26; Feb. 18, $82.40; Feb. 24, $131.36.

Q. Did you make the entries?

A. Yes, I made all the entries.

Q. And you know that that bill produced here was the one that was rendered by your company to the L. Bucki & Son Lumber Co., do you?

A. Yes, sir.

Q. There is an item there of $1984.10. Do you know what that was for?

A. On account of the timber not being fit for the use that it was required for, and fit for what they were paying for. It was not dressed properly.

Q. How was that incurred, that disbursement?

A. By labor, sir.

Q. Labor performed on it to make it fit for the purpose for which it was ordered?

A. Yes, dressing.

Q. There is an item on here of $500 allowance for account
93 of waste on material bought from stock. That is an estimate, I understand, of what it would be?

A. Yes, sir.

Q. The statement last given from your ledger represents the actual amount of money which you paid out on these various accounts, does it not?

(A.) Yes, on Mr. Bucki's account.

Q. You don't know that the Degnon-McLean Construction Company really sustained a loss of $500, do you, or not?

A. No, the charge was given to me, sir, by the chief engineer, Mr. Bucki's representative being present when this bill was made out.

Q. Do you or not know of your own personal knowledge whether these various items of excess charges represent the least amount for which you might have purchased the lumber needed on those various dates to make up deficiencies in deliveries made you by the Bucki Company?

A. No, sir; I didn't send out for prices or order the material.

Q. Has any part of the account offered in evidence and rendered by you to the Bucki Company been paid by them?

A. By account contra it has.

Q. That is to say, you have retained part of it out of the money which you owed them for lumber delivered?

A. Yes, sir.

A. (Q.) Were these purchased on account of which excess charges were made necessary on account of the failure to deliver lumber or because the lumber delivered was of so defective a character that it was not fit for use? Have you any personal knowledge that will enable you to answer either one way or the other?

A. It was on account of the failure to deliver the material.

Q. In that answer you don't of course include this $1984.00 which is for dressing lumber?

A No, that could hardly be termed an excess charge. That $1900 odd was on account of defective dressing for material that was actually delivered.

Q. And when was that delivered? Do you know?

A. At various dates, you know—different times.

And the said testimony of the said witness was read in evidence for the purpose of proving and as tending to prove the item of charges made by the Degnon McLean Company against the plaintiff on account of the non-delivery of lumber according to the terms of its contract.

And thereupon the court on motion of the defendant ex-
94 cluded such testimony from the jury, and decided it was not admissible, on the ground that the said witness did not know of his own personal knowledge that charges and items of charges appearing in said testimony, made by the said company against the plaintiff on account of lumber and timber to make up dificiencies in the orders for timber and lumber taken by the plaintiff prior to October 1st, 1897, were correct and true, and that it was not the best evidence to prove such facts to which decision of the court excluding testimony, the plaintiff then and there and before the jury retired, excepted on the ground that such testimony was legally admissible to prove that such charges and items of charges were made against the plaintiff, and which tended to prove, with or without other testimony, that such charges were just and correct. And on the ground the entries in the books of a business concern having been proven to have been regularly kept and the entries made in the usual course of business by the book-keeper who kept such books and made such entries are admissible in evidence although such book-keeper has no personal knowledge of the original transaction conducted and made by other employés were well founded in fact.

And D. U. FLETCHER, Esq., testified that he was the local counsel for the defendant, and a local director of defendant.

And defendant on its part examined THOMAS V. CASHEN, who testified that he was the owner of a saw-mill in Jacksonville aforesaid of a capacity of ten to eleven million feet board measure per annum; that in the year 1898, he supplied his mill with logs by pur-

chasing rafts of logs that were b-ought down the St. Johns river and by logging from his own lands near the St. Johns river; and that estimating his stumpage on his own lands at one dollar per thousand, his logs cost him delivered in his boom at his mill $5.80 per thousand feet, and that he was still operating his mill.

Defendant also examined as a witness in its behalf one M. D. BARBER, who testified that he was a logger, and that on an investment of sixty-five hundred dollars, by using a tram road with a hewn track eight and a half miles long, cutting one and a quarter miles on each side of the track, he was able to get out ten thousand feet per day of merchantable timber from lands that had been cut over twenty years before. And he further testified that to put in an average of 2,000,000 ft. a month would require about 12 outfits such as his, and in addition thereto mules and carts, and that he
95 estimated that it would cost about $75,000 to prepare to get out 2,000,000 a month by the use of poll roads.

Plaintiff also examined as a witness HENRY CLARK, who testified that he had been engaged in manufacturing at his own mill in Jacksonville, aforesaid, yellow-pine timber and lumber for thirty years and upwards; that the capacity of his mill was about forty thousand feet per day, and that he had obtained his supply of logs chiefly from loggers who brought them in rafts down the St. Johns river. It was also established that in 1897, and ever since then, pine logs were sold in Jacksonville market in the absence of special contract on a basis of $7.00 per thousand feet board measure, for those averaging three to the 1000 feet, and that such market price increased or decreased $1.00 per unit as the logs increased or decreased from three logs per thousand feet.

Defendant also examined as a witness ARTHOR MEIGS, the general manager of the Atlantic Lumber Company, who testified that said company had been engaged in logging some years prior to and since the first day of October, 1897, except for a short time in said month, and that said company delivered to purchasers at or near said Jacksonville, on an average about two million feet per month of merchantable pine timber; and for some time had been logging from the said Payne Cochrane tract of land. And the said Meigs testified that in his opinion with the uncertainty as to time of obtaining iron rails and engines or other camp equipment it would have taken in October, 1897, six months for one experienced in logging to have prepared to put two million feet of *lots* (logs) into plaintiff's boom at its said mills.

And defendant examined DANIEL G. AMBLER, the president of the said, The Atlantic Lumber Company on October 1st, 1897, who testified that he had had great experience as a logger of yellow-pine logs in Florida for twenty-five years; and that in his opinion in October, A. D. 1897, one experienced in logging with ample means could, irrespective of making a profit in logging, have prepared to deliver two

million feet of logs into plaintiff's said boom within two months, but to do it at a profit would have required six months.

And the said Meigs further testified that the market price of logs in Jacksonville was a little higher in 1898 than in 1897, and higher in 1899 than in 1898.

96 And the said CHARLES L. BUCKI and the said HEAGEY testified that in their opinion the plaintiff, in the fall of 1897, could have prepared and organized a force and equipment and put two million feet of logs per month into plaintiffs boom, within sixty days, if plaintiff could have commanded and controlled suitable logging equipment or the requisite means and capital for a suitable logging plant.

And the plaintiff adduced testimony tending to establish that after the service of the said writs of attachment upon its said properties it was deprived of the means and credit requisite to supply its mills with logs, and prevented it from continuing in its said business and in its usual course of business aforesaid.

And plaintiff adduced testimony tending to prove that soon after writs of attachment were levied, its officers made efforts to purchase standing timber for the purpose of supplying its mill with logs and that offers for the same of such timber and lands to plaintiff were made for cash, and that plaintiff was unable to buy them for want of means.

And plaintiff adduced evidence tending to establish that besides *that besides* the said timber and lumber levied on 3,600.00 feet were sawn from said 3,000,000 feet of logs levied on which became subject to said liens; that it had a considerable quantity of timber and lumber, to wit: one million feet, afloat in ships and vessels on the way to the purchaser which had not been paid for; that it owned good outstanding accounts and bills receivable to the amount and value of about $15,000 in the ordinary course of business; and that the market price in Jacksonville of all such timber and lumber was at least sixty-five thousand dollars.

And the plaintiff adduced evidence tending to establish that its said mill plant, docks, wharves, reservoir, boom pens, were constructed in the fall of 1892, and winter of 1893; that they were economically constructed, and cost, excluding the land and reasonable compensation for the plans and specifications for such plant, about one hundred and thirty thousand dollars; and also adduced testimony tending to establish that excluding the said reservoir or elevated tank, docks and wharves, boom pens, outbuildings and yard structures, the remainder of said plant could not have been duplicated in the fall of 1897, for less than seventy-five thousand dollars; and that said plant and properties were in good repair and condition on October 1st, 1897.

And H. S. MITCHELL, an expert mill-builder, whose business it was to contract for saw-mill machinery, testified that he had been
97 over the plaintiff's mill plants, and that he would not hesitate to contract to duplicate the same, not including the dry

kilns and planers, for $32,000.00. The planers would be worth from 12 to 1500 dollars apiece. That the average life of the machinery of a mill was 8½ years, that this had been in use longer than that. It was only of value as a person had use for it. Unless some one had use for it, $5,000 would be a good price. This estimate did not include either kilns, planers, docks, reservoirs or boom pens.

And plaintiff adduced testimony tending to prove that there were no liens, or encumbrances of any kind whatever upon any of its said mill plant, properties, or said timber and lumber, prior to the levy of the said writs of attachment, that all such timber and lumber had been paid for except a claim of the said The Atlantic Lumber Company for about nine thousand dollars for logs delivered.

And the said CHARLES L. BUCKI testified that no suit of any kind was pending against the plaintiff prior to the levy of the said attachments except that it had been garnisheed by a creditor of one of its creditors, for about twenty-five hundred dollars, which the plaintiff paid on October 4th, 1897. And no testimony was adduced by the defendant tending to contradict the said testimony of the said Bucki, as to suits against the plaintiff.

The plaintiff and the defendant put in evidence the plaintiff's book, which tended to prove that plaintiff's indebtedness of every kind on October 1st, 1897, including the said claim of the Atlantic Lumber Company, was about sixty-three thousand dollars, of which about thirty-two thousand dollars was held by the said Bucki, a director of the plaintiff company, and one Henry Weiler, of New York, also a director of the plaintiff company, on which the interest was kept promptly paid, and that neither the said Bucki nor the said Weiler was at that time urging payment of his claims.

Plaintiff also adduced evidence tending to prove that on October 1st, aforesaid, only one piece of its commercial paper was outstanding that was due and payable on October 1st, aforesaid, and that was a draft to the order of the said The Atlantic Lumber Company for the sum of $5,340.75, which said company had negotiated at the National Bank of Jacksonville, which held said draft on said day; that said draft was dated August 16th, 1897, due ten days after date; that $2,000 of said draft was for an advance on logs to be delivered by the said Atlantic Lumber Company after the date of the said draft; that said draft had been protested, and that
98 the plaintiff claimed that it was entitled to a credit of the said draft in the hands of the said bank on the ground that said bank should have applied the proceeds of a draft for $4,000 which it received while holding said draft for $5,340.75. That subsequently plaintiff paid said draft less an amount of $2,000 which defendant had paid.

It was established by the evidence and was undisputed that no commercial paper of the plaintiff has ever gone to protest prior to

June 2nd, 1897, and that its credit was good and excellent up to about that date.

And plaintiff read in evidence a letter in words and figures following, to wit:

JACKSONVILLE, FLA., *June 4th*, 1897.

Mr. Chas. L. Bucki, New York, N. Y.

DEAR MR. BUCKI: I regret exceedingly that the draft due on the 2nd inst., was allowed to go to protest. The bank here and you understand that there is only one here that we can obtain discount from, is very nervous in regard to the general business situation and any evidence of weakness alarms them. I think that it will be necessary for you to make further explanation to Mr. Barnett in regard to the reasons for this being protested. He does not seem satisfied with the simple statement that it was an error in noting the date on which the note fell due, as you were on the ground and — would seem that your bank should have notified you of such paper by phone, and given you an opportunity to have protected same, as he understands that the paper was made payable at your bank.

You understand of course that we are willing to accommodate you and do everything in our power to assist you, as we have entire confidence in your ability to pay and the responsibility of your company, butt you must realize that we are in the hands of this one bank. We have no banking connections anywhere else and it would be impossible for us to accept your time paper, unless we can use it, as this is the only bank where we can do so.

At the time this paper fell due you had about $36,000.00 but of course a large amount was paid on the 2nd, viz: about one-third of the total. As it now stands they have your paper for $21,570.74 besides $3,500.00 which you have given us as advance on logs in the pen, making in all about $25,000.00, but of course at settlement time there is, for a day or two, about $30,000.00 or $35,000.00.

I hope that you will make satisfactory explanation to Bar-
99 nett as I believe that will be to your interest as well as to ours to do so. We certainly have no desire to refuse to take your paper for such time as we are able to use the same, but of course if we are unable to discount, we shall be obliged to call for cash.

Hoping to hear from you by return mail, I am,

Yours very truly,

(Sig.) ARTHUR MEIGS, *G. M.*

And the said Meigs testified that all the indebtedness mentioned in the said letter was paid before August 16th, 1897. And the said Meigs and the said Ambler testified that the draft of plaintiff protested June 2nd, 1897, was paid the next day after protest; that no other draft of plaintiff went to protest before July 15th, of said year; and between July 15th and August 15th, several drafts of plaintiff went to protest, but that such protested drafts were paid within a few days after protest, and none remained unpaid over one week after they were due. The said Meigs and Ambler also testified for

defendant that the plaintiff paid in cash to the said The Atlantic Lumber Company, between September 14th and September 27th, 1897, about ten thousand dollars on account of logs delivered between August 14th and September 15th, 1897, in addition to the $2,000 advanced in the said draft of $5,340.75. And the testimony tended to establish that plaintiff had up to September 28th, in said year, including said $2,000 paid to the said The Atlantic Lumber Company, the contract price of all logs it had delivered up to the 15th of said month, except that said draft for $5,340.75 had not been paid. And plaintiff adduced evidence establishing that when said attachments were levied, neither of its principal officers or directors was in the State of Florida; that its president and one other director came from New York to Jacksonville, a few days after such attachments were levied, and by giving such indemnity bonds and otherwise made an arrangement with the sheriff, who had said attached logs in his custody, by which the said mills resumed operation on October 11th, in the said year and continued to run until November 16th, during which time at plaintiff's expense the said three million feet of logs were sawn into timber and lumber amounting to about three million six hundred thousand feet; which as manufactured became subject to the lien of the said attachment for $75,000 by the arrangement aforesaid.

Plaintiff adduced testimony establishing that neither the president nor any director or other managing officer having any duty or authority to finance the plaintiff company, resided in Florida
100 and that Charles L. Bucki, the president of the plaintiff was in the city of New York, State of New York, during most of the time of the months of June, July, August and September in the year aforesaid, that he had the principal charge and management of such finances during the said months; and that the plaintiff permanently kept an office at No. 9 Broadway in said city. And the testimony established that the drafts aforesaid that were protested were drawn in Jacksonville in the name of "L. Bucki & Son Lumber Company, by Jas. B. Rosser, auditor," on the said L. Bucki & Son Lumber Company, at No. 9 Broadway, New York city; some day after date; there being no uniform number of days mentioned in such drafts; and that it was the general duty of the said president to provide for the payment of such drafts which were drawn to the order of the Atlantic Lumber Company, and by it indorsed and negotiated at the National Bank of Jacksonville, of which William B. Barnett was the president and Bion H. Barnett the cashier. Plaintiff adduced evidence establishing that in the case of the first of the said drafts, that was protested on the 2nd day of June aforesaid, and was paid the next day, a mistake or error had been made in noting in the said New York office the date when said draft was payable and that between July 14th and August 16th, during which period all of the other protested drafts matured except the said draft of $5,430.75, which was dated August 16th, and due ten days after date, Charles L. Bucki was frequently out of the city of New York on account of ill health; and the plaintiff's business did not then have his personal attention. And it was a conceded fact during the

trial of this case that the plaintiff by a written contract made prior to the year 1897, which was put in evidence, had sold to the Yellow Pine Company, a corporation engaged in the yellow-pine lumber and timber business in New York city, nearly the entire output of plaintiff's said mills for the whole year of A. D. 1897, and that said product was to be paid for f. o. b. at Jacksonville aforesaid, the said contract providing that the said Yellow Pine Company should take all of the timber which was about two-thirds of the product of said mills and a certain percentage of the boards; and the testimony tended to establish that during the spring and summer of 1897, owing to a scarcity of coastwise vessels, vessels could not be chartered or were not chartered by said Yellow Pine Company to remove the product of plaintiff's mills from its wharves and docks, and that the said Yellow Pine Company claimed and insisted that it was not bound to pay for such product until it was on board vessels at Jacksonville, and that this caused an unusually large accumulation of timber and lumber on said wharves, and a temporary shortness in
101 funds to meet such drafts, which ordinarily would not have occurred, and also caused the said mills to shut down and cease to manufacture for several days in August and September, for want of space to pile the product of its mills on the said wharves in the usual course of business. And testimony was adduced tending to prove that in August and September, said year, plaintiff commenced to receive pay for its said timber and lumber, and the plaintiff had commenced to pay the said Atlantic Lumber Company in cash, for the logs delivered; and that early in October, after such attachments had been levied and while the said properties were under attachments, the plaintiff received from the said Yellow Pine Company $10,000 on account of shipments of lumber, which was used in the plaintiff's business. The testimony tended to prove that it was not disputed that the said Yellow Pine Company was a large business concern, and financially able to meet its obligation.

And testimony was adduced tending to prove that at no time prior to October 1st, 1897, had the plaintiff been refused credit in Jacksonville, Florida.

H. W. SIMMONS, a witness for the defendant, testified that he was financial manager of the L. Bucki & Son Lumber Company, during the months of June, July and August and September, 1897; that during the months of July and August the drafts of the plaintiff given the Atlantic Lumber Company on account of purchase price of logs, frequently went to protest, but, as a rule, they were taken up within a day or so after the same were protested, except a certain draft of $5,340.00, given in August, protested for non-payment in that month, and which had not been paid on October 1st, 1897, that the credit of the L. Bucki & Son Lumber Company, in August, 1897, was bad, and in September of that year it was very bad, and that in the month of September, 1897, the company was unable to obtain loans from New York banks, including the two banks with which it had been accustomed to do business; that on October 1st, 1897, it was necessary for the company to have a loan of $25,000.00,

in order to have gone on at all, and to have gone on successfully the company must have had a loan of $50,000.00, and the witness further testified that the funds of the company were during the summer of 1897, largely absorbed in paying notes on account of a dividend declared in the month of May, 1897, and that notes for this dividend had been given to two of the stockholders, Charles L. Bucki and J. D. Bucki, and that the other stockholders had not received anything on account of such dividends. And the said
102 Charles L. Bucki testified that H. W. Simmons had no authority to negotiate loans for the plaintiff at the banks in New York.

J. B. MURPHREE, a witness for the defendant, testified on cross-examination, that he was a salesman for the plaintiff on October 1st, 1897, and that he did not think that there was any reason for the failure of the L. Bucki & Son Lumber Company or for its being in trouble when properly financed.

And the plaintiff's attorney propounded the following question- to the said Murphree:

"Q. You state that the capacity of the Bucki Lumber Company was two million feet a month?

"A. I stated the capacity of the mill of the Bucki Lumber Company was about two and one-half million.

"Q. Now in order to recover from the blow of the attachment and get the business in condition to equal that capacity, it was necessary, was it not to obtain a large tract of timber land and railroad, a great number of mules, carts and harness, and an investment of anywhere from $150,000 to $250,000?

"A. If they expected to log the mill somebody would have to make an investment of not less than that for a railroad; either they would have to do it or somebody else would have to do it in order to furnish them with logs."

It was established by the evidence that the amount of cash on hand possessed by the plaintiff on October 1st, 1897, was one hundred and twelve and $\frac{37}{100}$ ($112.37) dollars.

ARTHUR STEVENS, a witness for the plaintiff, testified that the value of the mill formerly owned by the plaintiff depended upon the use a person would have for it, and it was worth from $5,000 to $75,000 according to the use it could be put to.

And the plaintiff adduced evidence supported by the testimony of the said Meigs, and not disputed, in the latter part of September, A. D. 1896, a severe storm or tornado tore down, or killed, the greater part of the standing timber, on a large area or pine forests in Florida, on or near to which area the Atlantic Lumber Company was then logging and that in the winter of 1897, with the permission of the plaintiff, the said Atlantic Lumber Company commenced to deliver into plaintiff's boom more than two million feet per month, and continued to so deliver for several months more

than two million feet, of logs per month, in order to save such timber from injury by the worms; and that for several months up to July of said year, plaintiff advanced to the said Atlantic
103 Lumber Company, the plaintiff's negotiable paper on account of such excess of logs, the Atlantic Lumber Company agreeing to pay such drafts when due; and pay interest on the same that such advances at times amounted to several thousand dollars, and continued until some time in July of said year.

And plaintiff proved by said Meigs the following settlements between plaintiff and the said Atlantic Lumber Company, which were in evidence, and are in the words and figures following, to wit:

JACKSONVILLE, FLA., *August 2nd*, 1897.

L. Bucki & Son Lumber Company in account with the Atlantic Lumber Company for logs delivered July 15th to 31st, inclusive, 1897.

July 15th, 363 logs	102,296 feet
July 19th, 386 logs	99,044 feet
July 21st, 385 logs	101,689 feet
July 23rd, 376 logs	100,565 feet
July 26th, 378 logs	91,739 feet
July 28th, 397 logs	89,878 feet
July 20th, 394 logs	91,766 feet
July 31st, 375 logs	100,481 feet
3,054 logs	777,458 feet

777,458 feet at $7.25	$5,636.57	
Less 60 ds. disc. 8 per cent	75.14	
	5,561.43	$5,561.43
15th, by advance on logs delivered		3,000.00
		2,561.43
Aug. 2nd, to advance on logs to be delivered		3,000.00
		$5,561.43

JACKSONVILLE, FLA, *August 16th*, 1897.

L. Bucki & Son Lumber Co. in account with the Atlantic Lumber Company for logs delivered Au'st 1st to 14th, inc., 1897.

Aug. 2nd, 353 logs	98,891 feet
Aug. 3rd, 390 logs	103,438 feet
Aug. 4th, 372 logs	98,941 feet
Aug. 5th, 383 logs	104,638 feet
Aug. 7th, 379 logs	91,345 feet
Aug. 10th, 361 logs	96,319 feet
Aug. 11th, 373 logs	96,285 feet

	Aug. 12th, 357 logs	99,159 feet
104	Aug. 13th, 357 logs	97,388 feet
		886,404 feet
		at $7.25
	Less 60 days disc. 8 per cent	85.68
		6,426.43
		6,340.75
	By advance on logs Aug. 2nd	3,000.00
	16th	3,340.75
	16th, to advance on logs to be delivered	2,000.00
		$5,340.75

Memorandum.

Delivery for period ending July 31st	777,458 feet
Delivery for period ending Aug. 14th	886,404 feet
	1,663,862 feet
Delivery as per contract should be	2,000,000 feet
Shortage on delivery, July 15th to Aug. 15th	336,138
Shortage on delivery up to July 15th	498,973
Total shortage on delivery up to Aug. 15th	835,111

JACKSONVILLE, FLORIDA, *Aug. 16th*, 1897.

Received from J. B. Rosser, auditor for the L. Bucki & Son Lumber Company, his draft on the L. Bucki & Son Lumber Company, New York city, dated August 16th, due ten days from date, or $5,340.75, which amount when paid will be in settlement of the above, but not otherwise.

THE ATLANTIC LUMBER COMPANY,
By ARTHUR MEIGS, *Gen. M'g'r & Treas.*

BION H. BARNETT, a witness for the defendant, testified that he was cashier of the National Bank of Jacksonville, Florida, and that prior to October 1st, 1897, the plaintiff had done such banking business as it transacted in Jacksonville, with his bank. That prior to July, 1897, his bank had been accustomed to advance the plaintiff from $2,500.00 to $5,000.00 in each month for a period of about five days, to meet its pay-roll, but that it did not make such advances during the months of August and September, and that in September, 1897, the credit of the plaintiff with the bank was limited, and the witness further testified that he did not regard the saw-mill plant of the defendant as proper security for a bank to make a loan upon.

105 JOHN N. C. STOCKTON, a witness for the defendant, testified that he leased the mill of L. Bucki & Son Lumber Company on February 22nd, 1897, for a period of one year at a rental of $1,000 a month, and that he only sawed about seven million feet of lumber during that year and did not saw any more because he did not wish to risk any more money upon it and that he did not believe that the mill could have made a profit of its business during the year 1898, if it had been run at its full capacity, owing to the depressed condition of the lumber market and it was further established by the evidence that the mill was run by said Stockton at a loss of $18,000.00.

And other evidence was adduced establishing that no settlements were ever made for logs delivered after the said settlement of August 16th, 1897; and that thereafter the said The Atlantic Lumber Company required payments in cash on account of the logs delivered between August 14th, and October 1st, 1897.

The testimony during the trial disclosed that there was a written contract between the plaintiff and the said The Atlantic Lumber Company under which the latter was bound to deliver into the boom pens of plaintiff two million feet per month of good merchantable pine logs for eight years, guaranteeing that such logs should average three and one-half per thousand feet; and commencing about the 1st day of *of* April, A.D. 1893, that certain witnesses testifies as to some of the contents of such contract; and thereupon the plaintiff offered to prove the execution of the said contract and offered it in evidence, *when* said contract is the words and figures following, to wit:

"Articles of agreement between the Ambler Lumber Company, a corporation of the State of Florida, of the first part, and Charles Lloyd Bucki, of Ellaville, Florida, of the second part.

The said parties each in consideration of the things herein agreed to be done and observed by the other, agrees as follows:

1. The party of the first part to deliver to said party of the second part, and he to receive from it at his log pens in Jacksonville, Florida, for the period of eight years, counting from the starting up of the mill hereinafter mentioned, good merchantable pine logs to the amount of one million five hundred thousand feet, board measure, according to Preston's rules of measurement, each month, provided that at any time within four months from the starting up of the mill, the quantity to be delivered per month may be increased at the
106 option of the party of the second part, on thirty days' notice so as, however, not to exceed two millions feet in any one month, and the amount so fixed shall be monthly delivered during the term of this contract; and provided further that all logs that may have been delivered and accepted previous to the starting up of the mill shall be treated as a proper delivery under this contract. Said logs shall average, according to Preston's scale, three and one-half logs to the one thousand feet, which party of the first part guarantees, and no deduction shall be made for the sap, and the party of the

first part guarantees that the sap on logs delivered during the term of this contract shall not exceed an average of four inches of the diameter of the log, at the small end, and if at the end of any six months such sap shall have exceeded an average of four inches of such diameter there shall be refunded the value of such average excess, anything herein to the contrary notwithstanding. At the determination of the contract all of the averages of the sap to be adjusted to cover the entire period, and if the average of logs delivered during the entire period shall be within the limit of four inches of sap, then any amount allowed for such excess shall be paid to the said party of the first part. All logs to be of good average lengths, say, from seventeen to forty feet. All logs are to be scaled at the small end and inside the bark according to Preston's rules, provided that all logs which shall be over forty feet in length, by special order of the party of the second part, shall be scaled by middle measurement under Preston's rules; and provided further, that the party of the first part may, if it desires, deliver logs over forty feet in length without specific orders, but in such case the logs shall be measured at the small end.

II. When the logs shall be ready for delivery at the log pens of the party of the second part the parties shall jointly select a surveyor whose wages shall be paid one-half by each party, who shall survey and scale according to Preston's rules, as the same shall be delivered at the said logs pens, and report thereon, in writing to each of the parties, and whose report shall be conclusive as to quality and quantity; provided that if either party shall in writing object to the surveyor so jointly selected, at any time thereafter, or in case of his death, or inability to serve, a successor or substitute shall be at once mutually chosen.

III. The said party of the second part shall have the privilege of ordering from said party of the first part, at pleasure, logs of specific length of thirty feet and less, which said parties agree to furnish; provided that whenever in the filling of such specific orders logs shall be supplied that scale less than at the rate of one thou-
107 sand feet to every three and one-half logs, such logs shall not be so counted as to effect the said average of three and one-half logs to the thousand feet.

IV. Until delivery by said party of the first part at said log pens, the expense and risk shall be exclusively that of the said party of the first part, but the party of the second part agree- to furnish at *its* expense, two men to assist in inloading the trains during the usual working hours at the mill without intermission for any reason, and to provide a log pen of sufficient capacity to hold two million feet of logs, board measure.

V. During the five years next succeeding this contract, the party of the second part is to pay said party of the first part at the rate of seven $\frac{25}{100}$ dollars per thousand feet of logs, board measure, for the logs delivered to him, measurement to be made as hereinbefore provided, and thereafter and during the remainder of the term of this contract, that is to say, during the three years next ensuing, at the rate of seven $\frac{75}{100}$ dollars per thousand. Payments shall be

made by the said party of the second part, and he hereby agrees to pay, on the first and fifteenth of each month for all previous deliveries, that is to say, on the fifteenth of the month, for the deliveries between that date and the last day of the preceding month, and the first day of the month for those between that date and the fourteenth of the preceding month, in drafts payable in bank in the city of New York, sixty days after the date thereof; but after one year from this date, party of the first part may demand cash, allowing a discount at the rate of eight per cent. per annum and the party of the second part shall, on such demand, pay the cash.

VI. In the event of the destruction by fire or other accident of the mill of the said party of the second part, or in the event of any casualty rendering necessary the stoppage of the mill for more than thirty days, in order to make repairs, then and whenever such stoppage shall be occasioned and notice thereof, in writing, be given, he shall not be required to take any logs after thirty days from the giving of the said notice until he can repair and resume operations; provided, and it is so expressly agreed by the said party of the second part, that he will proceed with due diligence to rebuild or make all repairs that may be needed to resume operations and to perform his part of this agreement. And provided further, that he shall pay, in such event, to said party of the first part the actual expense of it, feeding and caring for live stock and for salaries of men employed, choppers and teamsters, however, to be discharged.

108 VII. The party of the first part agrees to use its best endeavors to secure upon terms satisfactory to it a lease for the term of eight years, that is, the period covered by this agreement, of the eastern five hundred feet of the mill site, known as the Hardy mill site, near said Jacksonville, and assign same to said party of the second part, he agreeing to pay the taxes that may be assessed thereon during said term.

VIII. The party of the first part shall cause to be delivered to the party of the second part, the bond of D. G. Ambler in the sum of *of* $75,000 to enure in case of assignment by said party of the second part of this contract to the benefit of his assigns, conditioned to be void if the party of the first part shall keep and perform all and singular the terms of this contract on its part and indemnify the party of the second part for all damages he may sustain, liquidated and unliquidated, by reason of the failure or neglect of the party of the first part to carry out *and* all and singular the terms of this contract according to the true intent and meaning thereof.

IX. The party of the first part shall purchase from the party of the second part such of his mules, carts and other camp equipages as it may from time to time require in its business of logging, at a valuation to be fixed by arbitrators, one to be selected by each of the parties, who, in case they cannot agree, shall select an umpire, and their decisions or his shall be final and conclusive upon both.

X. Said party of the second part shall have the right to assign at any time this contract to a company which he may cause to be incorporated, but in such event he shall deliver to the party of the

first part his bond of indemnity in the sum of seventy-five thousand dollars, conditioned that said company shall in all respects well and truly perform all and singular, the terms of this contract, without default or dlelay.

XI. In case of any disagreement as to any matters arising out of this contract, as to the true interpretation thereof, or as to anything therein conttained, the same shall be submitted to arbitrators in the manner andl with the like effect hereinabove provided in relation to mules, carts and camp equipages, and if either party refuse, after ten days' written notice from the other, to select an arbitrator, the other of saidl parties shall then notify the one so *filing* (failing) or refusing of iits appointment of an arbitrator, to whom the whole matter shalll be submitted, and the decision of such arbitrator shall have the same force and effect as if he had been named as umpire; provided, however, either party may demand a statutory arbitration under the statutes of Florida.

XII. The said party of the second part shall, as soon as he
109 secures a proper mill site, proceed to erect a mill adapted to the carrying out of this contract on the said Hardy mill site or on some other site to be secured by said party of the second part, which other site shall be satisfactory to said party of the first part, and shall, within five months from the securing of a mill site satisfactory to the parties, have the same complete and ready for operation; and as soon as the mill is ready for operation, said party of the first part shall commence the delivery of logs under this contract; and this agreement is to continue in force during the period of eight years counting from the day when the said mill starts up. Provided that if he shall select another mill site than the said Hardy mill site, satisfactory to the party of the first part, the said party of the second part shall be at liberty to take the same and thereon erect his mill, and every provision and condition of this agreement shall be applicable thereto, with the same effect as though the said preferred site had been the one named herein, except that all the costs of securing the same and the rent thereof shall be exclusively borne by the said party of the second part.

XIII. This agreement is intended to bind the successors and assigns of the party of the first part, and the heirs, executors, administrators and assigns of the party of the second part, and in case of the breach of either of the parties of any substantial provision of this contract, the party committing such breach shall pay to the other, seventy-five thousand dollars as liquidated damages, that being the amount fixed by the parties as the damage which either would sustain by any such breach on the part of the other.

XIV. In case *of* the said Hardy mill site shall be taken as aforesaid by the said party of the second part there shall be secured to him an option for the purchase thereof within three months after the determination of said lease, at a price to be determined by arbitration, and it shall be provided that in case he does not exercise such option, he may remove his mill and appurtenances within six months after the determination of the lease.

It is also agreed that said party of the first part shall have a con-

venient right of way for its tracks over the said mill site and log pen, so as to enable it to conv-iently and expeditiously unload its cars and make up and drill its trains: and said party of the second part shall keep the logs cleared away from the track of the road as they are unloaded, so as not to hinder or delay the unloading, and the said log pen shall be so arranged by said party of the second part as to facilitate and expedite the unloading of said logs and shall have capacity for not less than two million feet, board measure, according to the aforesaid rule of measurement.

It is further understood that the party of the second part is to have the log pen ready for delivery of logs sixty days prior to the mill starting up. In case the party of the first part shall fail to furnish logs so as to keep the said mill fully supplied according to the terms thereof, then and in such event the party of the second part may procure logs from any other source, if he conveniently can, and the party of the first part shall pay the increase- cost of said log-, if any, to the party of the second part, provided that the party of the first part may, in case it shall not be satisfied with the increase-cost, pay instead thereof the actual cost of maintaining said mill, to include wages except of common laborers." In testimony whereof the parties have hereunto set their hands and seals, this the twenty-eight of June, 1902, the words "good and merchantable" on the first page, second page, "any;" on the third page, "as;" on the fourth page, "allowing a discount;" on the sixth page, "substantial provisions of," being first interlined.

AMBLER LUMBER COMPANY,
Per D. G. AMBLER,
ARTHUR MEIGS,
General Manager and Treasurer.
CHAS. LLOYD BUCKI.

And the said court excluded the said contract upon the ground that it was immaterial to any issue in this suit, that the defendant was not a party to such contract, and any question arising under it in connection with this suit had been fully adjudicated; and would not allow it to be read to the jury, to which ruling excluding the said contract the plaintiff then and there and before the jury retired, excepted, on the ground that the said contract was the best evidence of its contents, and on the ground that the contents of such contract *was* relevant to the issues, and material for the jury to know in order to be informed of the kind of logs called for by such contract, the dates of payment therefor, in order to decide correctly the relations between the parties to such contract, and to determine in connection with other evidence whether the plaintiff had any grounds to dispute the claim of the said Atlantic Lumber Company made for logs delivered prior to October 1st, 1897; and the foregoing exception constitutes plaintiff's first exception.

The plaintiff had before the said written contract had been offered in evidence, adduced testimony tending to prove that the logs the Atlantic Lumber Company had delivered for some time prior to

October 1st, in said year, were smaller *then* (than) called for
111 by the said contract, and that on September 11th of said year, plaintiff had notified the said Atlantic Lumber Company that the logs it had then been delivering were smaller than called for by the contract, and the plaintiff had also adduced testimony to prove that the said contract price of logs was $7.25 per thousand, and evidence tending to prove that such price was seventy-five cents per thousand feet above the market price in Jacksonville, for logs averaging three and one-half per thousand feet, during the year 1897.

It was a conceded fact in the trial of this action that the said Atlantic Lumber Company did not deliver any logs to plaintiff under said contract after September 30th, 1897, or under any other contract.

The defendant read in evidence so much of the summons and first declaration filed in the action in which the said writ of attachment for $9,980.80 was issued, as proved, that the *ad damnum* in said action was $15,000 and the plaintiff read in evidence so much of the declaration as proved that the said suit was brought to recover a balance claimed for logs delivered, and that such balance as stated in said declaration was the exact sum of $8,609.78; and it was a conceded fact that the said Atlantic Lumber Company asserted other claims against the plaintiff not arising from logs deliveries, amounting to about $1,800, which claims had been in existence for two years prior to October 1st, 1897, and were disputed by the plaintiff and which latter claim was asserted in an amended declaration in said suit afterwards filed. And that the plaintiff, The Atlantic Lumber Company, recovered a judgment for $8,600, which did not include the amount of the draft of $5,340.75 *dollars*.

The defendant also read in evidence so much of the summons and the declaration in the action in which the said writ of attachment for $75,000 was issued, as proven that the *ad damnum* in said action was $200,000. And it was a conceded fact during the trial of this case that the said damages of $200,000 *was* asserted on the averment and claim that on or prior to October 1, 1897, the plaintiff had breached the said written contract for log deliveries for eight years in such a manner as to excuse the said Atlantic Lumber Company for making further deliveries after September 30th, aforesaid, and conferred the right to recover future profits it would have made if it had completed the performances for log deliveries.

And it was a conceded fact in this case that on the trial of the motion to dissolve the said attachment for $75,000, it was decided by the said trial court, said motion being tried without a jury, that the said Atlantic Lumber Company had itself so broken the said written contract prior to Oct. 1st, 1897, as to defeat and prevent
112 the said Atlantic Lumber Company from recovering from the plaintiff any damages as profits which might have been made on the unperformed period of the said contract.

It was also a conceded fact at the trial of this action, and the records of the trial court proved, that the action claiming $200,000 damages came on to be tried the latter part of April, A. D., 1898, and after the jury had been impaneled, the plaintiff, the said Atlan-

tic Lumber Company, read to the court a previously prepared written statement of all the facts it could prove to support its said action, and thereupon the said trial court ruled and decided in the words and figures following, to wit:

"Upon presentation of the foregoing statement, it appearing therefrom that the plaintiff in the months of June, July, August and September, 1897, delivered logs less in size than ones averaging 3.50 to the 1,000 feet, board measure, according to Preston's rules, the court considers that the plaintiff cannot recover on the causes of action set forth in the 3d, 4th, 5th, 6th, 7th and 10th counts of its declaration, and accordingly instructs the jury to find a verdict for the defendant on those counts, to which plaintiff excepts. And it is ordered by the court that this statement be made a part of the record in this cause.

"Done and ordered in open court on this the 25th day of April, 1898.

"JAMES W. LOCKE, *Judge.* [SEAL.]"

Which ruling and decision the plaintiff in this case put in evidence as well as the final judgment hereinbefore set forth, on the merits of the said action, claiming damages for $200,000.

And such further proceedings were had during the trial of this action that after the testimony had all been adduced and closed, both on behalf of the plaintiff and defendant, and as the plaintiff's attorney was about to address the court and jury on the issues of law and fact, defendant, by its attorney, made a motion in writing, which is in the words and figures following, to wit:

L. BUCKI & SON LUMBER CO.
vs.
THE FIDELITY & DEPOSIT CO.

Defendant's Motion to Withdraw Testimony from the Consideration of the Jury.

Now comes the defendant by its attorneys and after all the testimony had been taken by the plaintiff and defendant, moves the court to exclude from the consideration of the jury the following testimony:

113 1. All testimony in regard to the profits that the plaintiff's mill had been making prior to October 1st, 1897, on the grounds following:

A. Because loss of profits on the operation of the mill are not a proper element of damages in this case.

B. Because the profits that the plaintiff may have made in the past are not a proper criterion of what it would have earned in the future.

C. Because the said estimate of $7,500.00 a month, was stated by the witness who made it to have been based on the "cost of the logs, the cost of the manufacturing and the net result of the sales, the actual sales, deducting one from the other, and taking off the cost of

selling," which is an unintelligible statement, and because the witness that made it admitted in cross-examination that he did not know what the lumber on hand sold for.

D. Because even if such testimony tended to prove that plaintiff had lost profits by reason of the attachment, such loss would be speculative and too remote as a reason of damages in this case.

2. All testimony relative to the cost of manufacturing lumber, and the supply of the timber lands and logs, on the grounds following:

A. That such evidence is incompetent, and

B. That loss of profits by reason of the plaintiff's inability to operate its mill after November 16th, 1897, cannot be recovered in this suit, and

C. Because the plaintiff has adduced no testimony to show that it could have gone on with its business after November 16th, 1897, even though no attachment had been levied, and

D. Because the testimony demonstrates conclusively that the plaintiff could not have operated its mill at a profit, even though no attachment had been levied.

3. All testimony in regard to damage to credit and loss of profits as a consequence thereof.

A. Because the plaintiff had adduced no testimony to show that it had any credit prior to October 1st, 1897.

B. Because the plaintiff had not shown that it could have obtained a loan of the funds necessary to carry on its business, even though no attcachment had been sued out against it.

C. Because the testimony of the plaintiff shows conclusively that the plaintiff had no credit on October 1st, 1897.

4. All testimony in regard to the salaries and loss of time of the salesmen Furfree and Cohen.

A. Because the evidence fails to show that the said salesmen could have made any sales during the time the mill was shut down.

114 B. Because the evidence shows that all said lumber was sold and shipped prior to January 1st, 1898, the time at which the employment of said salesmen terminated.

D. Because the loss of the service of the employés did not result directly from the levy of the writ of attachment.

E. Because it was not shown that the mill would have run had no attachment been levied.

5. All testimony in regard to the salary and loss of time of the secretary, and the New York book-keeper, on the same grounds lost above, except the first and second, and because it was not shown that said employés were idle, or if idle, what the value of their lost time was.

6. All testimony in regard to the salary of the president of the mill, the superintendent and stenographer, and the planing mill superintendent.

A. Because the loss of the services of these officers, if loss there was, did not result directly from the levy of the writ of attachment, and are not proper elements of damages herein.

B. Because there is no evidence to show that said employés were idle from October 1st to October 10th, 1897.

D. Because the mill manufactured the average monthly quantity of lumber in October, 1897, and it appears that the plaintiff got substantially the same amount of services out of these employés as in other months.

E. Because the mill finally shut down November 16th, 1897, within the year for which these employés were employed, and ten days later than it would have shut down, but for the shut down in October, 1897.

7. All evidence relative to the market price of lumber subsequent to the 6th day of February, 1899, because on that day, the ownership of the mill property passed out of the possession of the plaintiff.

R. H. LIGGETT,
D. U. FLETCHER,
Defendant's Attorneys.

And on consideration of the said motion, the said court ruled thereon in writing in words and figures following, to wit:

This cause coming on to be heard on a motion of the defendant's attorney to exclude certain testimony from the jury, and it being considered that under the testimony introduced, any damages arising from the consideration of injury to credit or loss of profits would be too remote, uncertain and speculative, it is therefore ordered that this motion be granted as to the testimony relating to the cost of manufacturing lumber and the supply of timber lands; all
115 testimony to the damage to credit, loss of profits and all evidence relative to the market prices of lumber subsequent to the attachment. That in regard to the profits plaintiff's mill had been making prior to October 1st, 1897, be retained and considered only for the purpose of determining the actual damages suffered during the time the operation of the mill was suspended on account of the attachment and the motion be denied in all other respects.

Feb. 1st, 1900.

JAMES W. LOCKE, *Judge.*

And the said trial judge expressed his oral opinion in the words and figures following, to wit:

"This order is made at this time only for the purpose of confining the argument to the jury upon these lines. I am fully satisfied in my own mind that damages from the loss of profits arising from the subsequent or future business which might possibly have been carried on is under the evidence, too remote and speculative for the testimony to go to the jury. Some courts have held that every fact should go to the jury to be considered, but the United States courts have uniformly held that where the testimony is such that any reasonable man, or any reasonable court could view it in but one light, the court may exclude it from the jury. In this matter I have admitted the testimony, but I fail to find that there is such evidence of damage from loss of future profits as should go to the jury. If there was no combination of circumstances other than the attachment; had a third party come in and levied an attachment and stopped the business, and there had been no suspension save by

the attachment, then there might have been such testimony as would prove a loss of profits; but in this case the particular circumstances, the suspension of the contract for the delivery of logs and the bringing of the two common-law suits, so changed the circumstances that there is no certainty that there could have been any profit.

Every author of authority referred to, even by the plaintiff's attorney, says that there must be some certainty.

Now the certainty of profits here depends upon this: It is claimed that on account of these attachments the plaintiff's credit was injured; that had it not been for the attachments, money could have been borrowed, timber land or stumpage could have been procured, logs could have been procured profitably; if logs could have been procured profitably, lumber could have been manufactured and marketed profitably. Now, between the borrowing of the money and the marketing of the lumber there are so many uncertainties that the court cannot say that there is sufficient to justify the jury in finding perhaps large damages against the defendant in
116 this case on account of loss of credit and profit—from the levying of the attachments."

To which ruling, the plaintiff, by its attorney, then and there and before the jury retired, excepted on the grounds:

1. Because the ruling of the court invades the plaintiff's constitutional right to trial by jury as to the question whether plaintiff could have continued its business and in the usual course of business if these attachments had not been levied.

2. The theory of the declaration upon which the plaintiff proceeded in the trial of the cause was that the attachments interrupted the business of the plaintiff and caused its interruption for a long period of time, and that the plaintiff was entitled to prove and submit to the jury the question as to the loss of the use of its mill properties in consequence of these attachments. That during the taking of the testimony the court repeatedly sustained the theory of the plaintiff, and on the objection of the defendant overruled objections of the defendant that testimony was not admissible to prove the past profits of the plaintiff's properties prior to October 1st, 1897, as a basis upon which to estimate the profits the plaintiff lost after October 1st, 1897, as a consequence of these attachments. That the ruling of the court by the said order and decision has now taken the plaintiff by surprise, for if the court had excluded the testimony offered by the plaintiff, and by the defendant also, tending to establish the profits the mill made up to October 1st, 1897, for the purposes of estimating the profits that would have been made subsequently if the attachments had not been levied, the plaintiff would have proceeded upon another theory to show other and different damages, which relying upon the rulings of the court, the plaintiff did not offer, to wit: testimony, some of which was offered and excluded, tending to show the deterioration of the property while the attachments were pending; testimony tending to establish more than by mere incidental evidence the taxes, costs of repairs, costs of insurance and costs of keeping watchmen, and to have introduced further testimony tending to show the amount of capital invested

and the rental value of the property, and for these reasons the ruling of the court has taken plaintiff and his counsel by surprise, and to the plaintiff's prejudice, and tends to destroy the right of the plaintiff to a fair trial by jury.

And this constitutes plaintiff's second exception.

And thereupon the plaintiff made and submitted a certain motion in writing, in the words and figures following, to wit:

In the Circuit Court of the United States, Southern District of Florida.

117 L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff by H. Bisbee, its attorney, and moves the court to discharge the jury in this case, and continue and postpone the trial of the case to some future day of this term on the following grounds:

First. Upon the issues made by the pleadings in this action, the plaintiff entered upon the trial and continued in the trial thereof until the testimony was closed upon the theory and belief that if the plaintiff could prove that on October 1st, 1897, when these attachments were levied, it was then and had been for over four years engaged in an establishing business of manufacturing and selling yellow-pine timber and lumber, and that up to said first day of October, its said business was a profitable one; and prove that as a direct consequence of such attachments, the plaintiff's business was broken up, interrupted and destroyed, for a period of time as such consequence of said attachments; then one element of plaintiff's damages would be the profits it lost in its said business after October 1st, 1897, in consequence of such attachments. That the court, over objections of the defendant, repeatedly ruled and held that testimony offered by the plaintiff was admissable and admitted such testimony to prove the profits the plaintiff made in its business for several months prior to October 1st, 1897, and the defendant also adduced testimony tending to establish the amount of the profits of such business for several months prior to October 1st, 1897. That such repeated rulings of the court led the plaintiff and its counsel to believe, and they did believe that such theory was in law correct, and that the court would submit such testimony to the jury, to be considered by it in assessing the amount of damages plaintiff had sustained in consequence of such attachments, in connection with the question whether or not the plaintiff would have been financially able to continue its business after October 1st, 1897, during the period of time such attachments were existing and operative. That after the testimony in said action was closed on both sides, and before any augument of said cause to the court or jury, the court, on the motion of defendant, after argument of such motion, ruled and decided to exclude from the consideration of the jury all such testimony and evidence, and also ruled and decided that the evidence adduced as to the

financial ability of the plaintiff on October 1st, 1897, to have continued in business during said period of time if such attachments had not been levied. The court on said motion also ruled
118 and decided that the question whether or not the said attachments were the direct cause of preventing the plaintiff from continuing in business after October 1st, 1899, for the period aforesaid would not be submitted to the jury for its decision.

By such rulings of the court on the said motion and after the testimony in the case had been closed, the plaintiff and its attorney have been taken by surprise, to plaintiff's prejudice. That if said testimony of the plaintiff in respect to profits prior to October 1st, 1897, had been excluded when offered, the plaintiff would have and could have adduced other evidence establishing other elements of damages, to wit: loss of profits on timber and lumber to large amount, which such attachments prevented the plaintiff from delivering under contracts prior to October 1st, 1897, and which by such rulings plaintiff did not consider relevant or material.

Also but for the reason aforesaid, plaintiff could have adduced evidence establishing the losses it sustained by decay and deterioration of its mill properties, docks and wharves connects with said mill, and costs of repairs, while said mills were idle and not used, in consequence of such attachments, and the exact amount of taxes paid, and exact amount paid watchmen while said mill was so idle.

And on the further ground that a party to a suit during the taking of testimony cannot proceed on a certain theory of the law of the case, and after the testimony is adduced, change his position and ask instructions on another theory, to his adversary's prejudice, and what a party to the said suit cannot do, the court itself cannot do to the prejudice of a litigent.

(Signed) H. BISBEE,
Plaintiff's Att'y.

Which said motion the said court denied, upon the grounds that the plaintiff's counsel had had ample notice from the pleadings in the case that such testimony, relating to the damage to credit and loss of future profits, was only permitted to be introduced to determine how far it could prove certain and direct damages as the reasonably necessary result of the levying of the attachments, and that unless such damage was shown to be the direct and certain result from such cause, the court would order it withdrawn from the jury.

That the case stood for a long time upon the order striking certain matters of damages from the declaration and it was only admitted upon the urgent application and argument of the plaintiff's counsel that it was impossible to determine until the testimony was heard, how positive and certain such damages might be shown
119 to have been the direct result of the levy of the attachments and to the denial of such motion the plaintiff then and there and before the jury retired, excepted, for the reasons and grounds stated in the said motion, and this constitutes the plaintiff's third exception.

And during the argument by plaintiff to the jury, by its counsel, the latter said:

I don't know how to argue it in, your honor. You permit me to consider the evidence as to previous profits of the mill up to October 1st, for some purpose, what purpose, I don't know.

To which the court replied: To show the damages suffered while the property was in the custody of the sheriff under the attachment. The evidence shows it was released on the 11th of October.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

"It is a question of fact for you to determine whether or not if these attachments had not been issued and levied, the plaintiff would have been able to supply its mills with logs after such attachments and to what extent plaintiff would have been able to supply its mill with logs and continued in its business and the amount of profit it would have made in such business in case said attachments had not been issued, provided you believe from the evidence that the direct consequence of such attachment caused the plaintiff to cease continuing in its business and deprived it of its means of continuing in business and that plaintiff would have and could have continued in business if such attachments had not been issued and levied and continued upon plaintiff's properties."

And the court refused to give such instruction to the jury and to the refusal of the court to give said instruction, the plaintiff then and there, and before the jury retired, excepted, on the grounds,

1st. That by such refusal the plaintiff was deprived of the right to have a material question of fact tried by jury.

2nd. Because there was ample evidence upon which to submit such question of fact.

3rd. Because the said instruction embodied a correct principle of law applicable to the facts and evidence adduced in the case.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

"The question whether or not the plaintiff was deprived of the means and financial ability to supply itself with logs for its mill and continue in business after October 1st, 1897, as a direct
120 consequence of the issuing and levying of these attachments is one for the jury to decide.

Whether or not the plaintiff would have been financially able to continue in its usual business after October 1st, 1897, if these attachments had not been levied is a question of fact for the jury to decide upon a consideration of all the evidence in the case."

Which instructions the court refused to give, and to the refusal of the court to give said instructions plaintiff then and there, before the jury retired, excepted on the grounds that such instruction presented and embodied correct rules of law, and requested the submission to the jury of material questions of fact.

And the testimony being as hereinbefore set forth in the bill of

exceptions, the court was requested to instruct the jury as follows, to wit:

If you believe from the evidence that the issuing and levying of these writs of attachment injured and impaired the credit or financial standing as it existed on October 1st, 1897, then the plaintiff is entitled to recover such damages for injury to its credit as you find from the evidence the plaintiff sustained as a direct consequence of the issuing and levying of such writs upon the property of the plaintiff.

And the court refused to give said instructions to the jury, and to the decision of the court refusing to give such instructions to the jury, the plaintiff then and there, before the jury retired, excepted, on the grounds first, that there was ample grounds upon which to properly submit such instructions to the jury.

2nd. That such instructions embodied a correct proposition of law, applicable to the facts of the case.

3rd. Because said instructions presented a material question of fact.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

On the subject of the financial condition of the plaintiff with respect to its ability and means of continuing in its business after October 1st, 1897, you must understand that the question to determine *in* (is) not the opinion that any officer of the Atlantic Lumber Company entertained of the financial condition of the plaintiff, nor is it the question of the opinion entertained by any particular bank or other business house as to plaintiff's financial standing, especially as if difference or controversies arise between them.

The real question before you is what was the general financial condition of the plaintiff on October 1st, 1897, in respect to its ability and means of continuing business, if these attachments had not been levied, and in reaching a conclusion on this subject it is your duty to give weight to and consider the amount and value of all its property, its mill plant, lumber, timber and logs on hand and good outstanding claims against third parties, and the amount of its liabilities due and not due on October 1st. You should also consider its business connections with those engaged in the lumber business, the good will of those engaged in such businesses, and its facilities for doing business, finding a market for the product of its mills, and of supplying itself with logs for its mills.

121

You have heard the testimony as to the available round timber or logs on and after October 1st, 1897, and from this evidence, applying your common sense to the subject, you will conclude whether or not it is reasonably probable or certain that the plaintiff with such means as it had at its command would have been able to have supplied its mill with logs during the time attachments rested on plaintiff's property, if these attachments had not been levied, whether what one has done, another with equal means and skill can do, is not a question of science or law, but one of fact for you to decide.

Which instruction the court refused to give, to which refusal the

plaintiff then and there, before the jury retired, excepted on the ground that it presented correct rules of law, applicable to the case and upon material questions of fact to be decided by the jury, and said instructions was necessary to aid the jury to properly understand the questions to be decided.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows:

"If you believe from the evidence that after allowing all credits due for logs delivered prior to September 15th, 1897, the L. Bucki & Son Lumber Company on September 30th, 1897, did not owe the Atlantic Lumber Company for any logs delivered prior to September 15th, 1897, then the court instructs you that on October 1st, the Atlantic Lumber Company had no cause of action against the L. Bucki & Son Lumber Company on October 1st, 1897, for logs delivered between September 14th, and October 1st, 1897, and you will consider this fact in connection with the question of the financial condition and standing of the plaintiff on October 1st, 1897. The plaintiff was not in default for not paying for logs, for the logs delivered after September 14th, 1897, until after midnight of October 1st, 1897."

Which instruction the court refused to give on the ground
122 that such question had been fully adjudicated by this court in another suit, to which refusal to give said instruction, the plaintiff then and there, and before said jury retired, excepted on the ground that such instructions embodied correct rules of law applicable to material issues in the case, as one material question before the jury was the financial condition of the plaintiff on Oct. 1st, 1897, when the writs of attachment were levied.

And the testimony being as hereinbefore set forth in the bill of exceptions, and testimony having been adduced tending to prove the facts upon which the instruction was based, the court was requested to instruct the jury as follows, to wit:

"If you believe from the evidence that the Atlantic Lumber Company had endorsed and negotiated the draft of August 16, 1897, for $5,340.75, and that on the first day of October, 1897, the National Bank of Jacksonville was the holder of that draft, then the court instructs you that the Atlantic Lumber Company had no right to demand the payment of the amount of that draft to it on October 1st. 1897, and you will also consider that fact in connection with the question of the financial standing of the plaintiff on October 1st, 1897, the question of the financial standing of the plaintiff with the National Bank of Jacksonville is not to be confounded with or affected by the financial standing of the Atlantic Lumber Company with said bank; and if you believe from the evidence that the plaintiff *bona fide* claimed while said bank held the said draft for $5,340.75, that it, the plaintiff, was entitled to a credit of said draft of the proceeds of another draft for $4,000 and that after October 1st, 1897, said bank took and discounted other negotiable paper of the plaintiff, then you should consider these facts in reaching any conclusion as to the financial standing of the plaintiff with the said bank. You will not allow your minds to be influenced on the sub-

ject of the financial standing of the plaintiff with the National Bank of Jacksonville, on account of or by reason of any indebtedness by the Atlantic Lumber Company to such bank, for which the plaintiff was in no way liable."

Which said instruction the court refused to give, on the ground that all such questions had been finally adjudicated in another cause, and to such refusal the plaintiff then and there and before the jury retired, excepted on the ground that it presented material facts for the jury to consider in respect to the financial standing of the plaintiff, and embodied correct rules of law.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court (was) requested to instruct the jury as follows, to wit:

123 The amount of debts which in the business the plaintiff was engaged in owed and is able to carry and continue in business and ultimately pay and continue in business is not a question of law or science, but is a question of fact, for you, as twelve sensible men to decide. In this matter you will exercise and apply your knowledge of business affairs. You will apply your own judgment, and knowledge as to the amount of debts in comparison to its assets, the plaintiff could probably carry and continue in business.

Which instruction the court refused to give, to which refusal the *court* (plaintiff), then and there, and before the jury retired, excepted, on the ground that it correctly embodied a rule of law applicable to the facts, and presented a material fact for the jury to decide, and it was improper not to submit such question to the jury.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

"In determining whether or not it was reasonably probable that the plaintiff would have been able to continue in its business, and in its usual course of business, if these attachments had not been issued, you will take into consideration the amount and value and availibility of the plaintiff's assets, its business and trade connections, and the reputation it had of manufacturing and delivering lumber according to its obligations on and prior to October 1st, 1897, and the patronage it had enjoyed. These assets consisted of its mill properties, lumber and timber on its yards and wharves and afloat in transit; and what was due and payable to plaintiff on October 1st, 1897. You will also take into consideration the amount of debts and obligations the plaintiff owed on October 1st, 1897, as well those due *and* those then to become due." Which the court refused to give, and to such refusal plaintiff then and there and before the jury retired excepted, on the ground that such instructions embodied a correct rule of law, applicable to the case.

And the testimony being as hereinbefore set forth in the bill of exceptions and testimony having been adduced tending to prove the facts upon which this instruction was based, the court was requested to instruct the jury as follows, to wit:

If upon all the evidence before you, you believe the plaintiff would have been able, if these attachments had not been levied, *you* have supplied and obtained logs for its mills, and continued in its usual business after October 1st, 1897, for the period of time these attachment liens prevented plaintiff from using its mills, then you will award damages for the use of its properties as you have been before instructed.

Which instructions the court refused to give, as the same
124 were substantially contained in the general charge to the jury, and to such refusal the plaintiff then and there, and before the jury retired, excepted, on the grounds that the plaintiff was entitled to have the jury decide the facts presented by such requested instructions, and presented a correct rule of law.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

In determining this question of the probable ability of plaintiff being able to continue in business and in its usual course of business on and after October 1st, 1897, so far as any debts it then owed are considered, you will consider all the evidence; the amount and probable value of all its property and assets it then owned, including just claims and demands the plaintiff had against third parties, the condition of its business and of the lumber at that time, and the probable condition of such business in the then future.

You will also consider the amount of debts plaintiff owed on October 1st, 1897, when they became due and payable; the means it had, and probably would have by the sale of lumber and otherwise to meet such debts; or to obtain an extension of time of payment of such debts; until the plaintiff could pay them from its business.

Which said instruction the court refused to give to the jury, to which refusal the plaintiff, by its attorney, then and there and before the jury retired, excepted on the ground that it embodied a correct rule of law, applicable to the case and called upon the court to submit to the jury facts material to the plaintiff's case and was injured by such refusal, and plaintiff was entitled to have the facts presented, by such request submitted to the jury.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

If you believe from the evidence that the direct and proximate effect of these attachments was to create a lien upon substantially all the assets and properties of the plaintiff; and that in consequence of such liens upon the said properties, the plaintiff did not own and control the means and did not have the requisite credit to enable it to purchase logs and continue in its usual course of business; and that if such attachment had not been issued the plaintiff would have been able to continue to purchase a full supply of logs for its mills and continue in the usual course of its business, then the court instructs you that then plaintiff is entitled to recover from the defendant such sum of money as will compensate the plaintiff for all losses it sustained by reason of such attachments.

125 And the court refused to give said instruction- to the jury, and to the refusal of the court to give said instructions, the plaintiff then and there, and before the jury retired, excepted, on the grounds that the said instruction- embodied a correct rule of law applicable to this case, upon material questions of fact. And that the refusal to give such instruction was prejudicial to the plaintiff, and deprived the plaintiff of the right to have material questions of fact submitted to the jury.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

If you find from the evidence that the value of the use of the plaintiff's mill properties, and business, or its net income, for the nine months, a given sum of money per month, it does not follow that it is your duty to award the plaintiff such sum of money for each month subsequent to the attachment, during the period of time you find plaintiff was deprived of its use of its properties in consequence of such attachments.

The value of the use of plaintiff's properties and his business after October 1st, 1897, may be more or less per month than for the time previous to October 1st, 1897. The question you must determine from the evidence, and arrive at — the amount or damages from the loss of the use of plaintiff's properties, after considering all the evidence as to the probable condition and value of plaintiff's business, after October 1st, 1897, during the time the plaintiff lost the use of its properties, by reason of *much* attachments. You will also consider the time that may have been lost by the shutting down of the mill by breakage or otherwise; and if you believe from the evidence that the plaintiff had been able to continue in its business from April, 1893, to October 1st, 1897, with only such temporary interruption as is unavoidably incident to such business, then the presumption is that the plaintiff could have continued to carry on its business in the usual way, after October 1st, 1897; in the absence of evidence to the contrary and the burden of proof is upon the defendant to establish to your satisfaction that the plaintiff could not have continued in business, even if the attachments had not been issued, and if the evidence does not overcome such presumption, then you will find against the defendant on this branch of the case.

And the court refused to give such instruction to the jury, and to the refusal of the court to give such instruction to the jury, the plaintiff, then and there, and before the jury retired excepted upon the ground, that said instruction embodied a correct principle of law applicable to the facts of the case, and presented material questions of fact for the jury to consider.

126 And the testimony being as hereinbefore set forth in the bill of exceptions, and testimony having been adduced tending to prove the facts upon which this instruction was based, the court was requested to instruct the jury as follows, to wit:

You have heard the evidence in respect to the magnitude and volume of the plaintiff's business for nine months and more, prior to the date of the attachments, and in respect to the condition of

that business on that day the attachments were levied, and it is your duty, to weigh and consider that evidence carefully and deliberately, in order to determine the value of the plaintiff's business for those nine months, or more.

The court refused to give said instructions to the jury, and to such refusal of the court the plaintiff then and there, and before the jury retired, excepted, on the ground that it presented a material question for the consideration of the jury, and contained a correct proposition of law, applicable to the facts in evidence and was of a series of instructions applicable to the facts of the case.'

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

If from the evidence you can ascertain with reasonable certainty the net income of the plaintiff's business for the nine months prior to these attachments, then you have a right to consider, and it is your duty to consider the amount of such net income for the said nine months, as a basis and evidence upon which to estimate the amount of the plaintiff's net income would have been after the attachments were levied if these attachments had not been levied and continued on the plaintiff's property, and the plaintiff had continued in the usual course of business.

Which the court refused to give the jury and to the refusal of the court to give said instruction to the jury, the plaintiff then and there, and before the jury retired, excepted on the ground that it was an appropriate instruction, and contained a correct rule of law applicable to the facts of the case.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

The net profits of the plaintiff's business prior to October 1st, 1897, you will consider with all the other evidence in estimating the amount of profits which you believe the plaintiff would have made after October 1st, of said year, if these attachments had not been levied upon plaintiff's properties, and which you will find
127 that the plaintiff was prevented from making by the direct and proximate consequence and effect of issuing and levying these attachments.

And the period of time during which the plaintiff was so prevented from operating its mills and from making profits is for you to decide upon all the evidence of the case, and you are instructed that the testimony as to the profits of the plaintiff's business has not been excluded from your consideration.

Which instruction the court refused to give, to which refusal the plaintiff then and there, and before the jury retired excepted on the ground that it embodied correct rules of law, and were applicable to the facts of the case.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

The court instructs you to award damages to the plaintiff which it sustained by reason of or in consequence of the levy of the attachments upon all the timber and lumber and logs attached and to award such damages for the entire period of the time the lien of the said attachment remained and continued upon the timber and lumber and logs without any deductions from such damages from the fact that forthcoming bonds or indemnity bonds were given by the plaintiff.

If you find from the testimony that there is no other satisfactory evidence of the amount of such damages for the time the liens of the attachment remained and continued operative upon such timber and lumber then you may allow the plaintiff eight per cent. interest per annum upon the market value of such timber and lumber from the time of the attachments to the time when the lien of such attachment was released and discharged from this property, or its proceeds in its business, free and clear of any lien of such attachments.

Which said instruction the court refused to give to the jury and to such refusal the plaintiff then and there and before the jury retired, excepted on the ground that said instruction embodied correct principles of law, and because defendant is not entitled to any mitigation of damages by reason of plaintiff's giving forthcoming bonds.

And the court gave the jury the first part of said instruction as modified by striking out the words "without making" and inserting in lieu thereof the word "considering," to the giving of which the plaintiff then and there excepted on the same grounds stated for refusing to give said instructions without any modification.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as
128 follows, to wit:

If you believe from the evidence that the direct consequence of the said writs of attachment and the levying of the same upon logs and other properties of the plaintiff levied upon would have caused the suspension of the plaintiff's business for the period of time which it would have taken the said saw-mill to have sawn up said logs in the usual course of business, then the plaintiff is entitled to damages for the loss of the use of its said mills, and the suspension of its business during the period of time without any deduction or mitigation of damages from the fact that the plaintiff operated its mill and sawed up such logs with the consent of the sheriff or from fact that the plaintiff gave an indemnity bond to the sheriff or a forthcoming bond.

In such case the damage to the plaintiff was caused by levying of said writs when they were levied and the plaintiff owed no duty to the defendant to apply for and obtain such consent to the sheriff, or to give the sheriff any indemnity or forthcoming bond to enable it, the plaintiff, to saw up such logs.

Which instruction the court refused to give to the jury, to which refusal the plaintiff then and there, and before the jury retired excepted on the ground that it embodied correct rules of law, applicable to the facts in the case, and because the defendant was not entitled to any mitigation of damages because if any benefit the

plaintiff derived from collateral transaction with the sheriff a third parties, which defendant was a stranger.

The court gave to the jury the foregoing instruction, as modified by striking out the words "without any" and inserting in lieu thereof, the word "considering," to the giving of said instruction, the plaintiff then and there, and before the jury retired, excepted, on the grounds that there is no rule of law to support such an instruction, and on the ground that any benefit derived by giving such indemnity and forthcoming bonds, or operating its mills under an agreement with the sheriff, is not a ground to mitigate damages, and on the ground that there was no evidence, upon which such benefits could be estimated with any reasonable certainty.

And the testimony being as hereinbefore set forth in the bill of exceptions, and testimony having been adduced tending to prove the facts upon which this instruction was based, the court was requested to instruct the jury as follows, to wit:

"The giving of the indemnity bonds to the sheriff to enable the plaintiff to ship any part of the timber and lumber and account to the sheriff for its proceeds does not give the defendant in this suit any right to have the damages reduced that the plaintiff sustained in consequence of such attachment."

Which instruction the court refused to give to the jury, and
129 to which refusal the plaintiff, then and there, and before the jury retired excepted, on the ground that it embodied a correct rule of law, applicable to the facts of the case, and that the defendant was not entitled to any mitigation of damages arising from any benefit received by the plaintiff by any contract with the sheriff, to which defendant was not a party.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

The defendant's attorneys have, during the trial of this cause, announced that the Atlantic Lumber Company is under obligations to pay whatever judgment may be recovered in this case against The Fidel-ty & Deposit Company, the defendant here.

"The court instructs you that you will exclude entirely from your consideration such announcement by defendant's attorneys; and that you must not allow yourselves to be influenced in the slightest degree by any consideration as to who is liable to pay such judgment as may be recovered in this action. You have sworn to truly assess the damages in this action, and any failure to keep that oath would be a flagrant disregard of your duty as jurors."

Which instruction the court refused to give to the jury, and to its refusal to give such instruction, the plaintiff then and there, and before the jury retired, excepted, on the ground that it embodied a correct rule of law applicable to the facts in the case.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

"While the attachments were pending, it was not the duty of the plaintiff's stockholders to raise and put new capital into the busi-

ness in order to continue the same, or lessen the damages it might sustain in consequence of these attachments. The stockholders owed no such duty to defendant."

Which instruction the court refused to give to the jury, to which refusal to give such instruction, the plaintiff then and there, and before the jury retired, excepted, on the ground that said instruction embodied a correct rule of law, and was applicable to facts in evidence.

The testimony being as hereinbefore set forth in the bill of exceptions, the court instructed the jury, of its own motion, in the words and figures following, to wit:

"All these questions that have come up in regard to the damages; all this testimony that has come in to awaken your sympathies in behalf of one or the other, is not for you to consider; the only
130 question is a clear-cut question; it is how much damages did the Bucki Company suffer. This question becomes more difficulty by reason of facts and circumstances attending the writs of attachment. At the time the writs of attachment were levied, there were two common-law suits commenced, both of which have been terminated. That is one attending circumstance. The other is that the Atlantic Lumber Company cancelled its contract or considered it cancelled. That is, the Atlantic Company refused and ceased to deliver any more logs to the Bucki Company. So that the three combining circumstances, the levy of the writs of attachment, the ceasing to furnish logs and the common-law suits unite in being the cause for subsequent suffering of damage by the Bucki Company.

The law is distinct that where a party sets in motion a wrong, an intervening wrong will not prevent the party instituting or setting in force that wrong, from being liable for all damages which can be directly traced to that.

But in this case, the attachment did not cause the stopping of the furnishing of logs, nor did the issuing of the attachment cause the institution of the common-law suits. I therefore say that it is difficult for you to determine how much damage the Bucki Company suffered by reason of the issuing of the attachments; not how much they suffered by reason of all the attending circumstances, but how much they suffered by reason of the issuing of the attachments.

If there is any question upon which the court considers a verdict would not be justified and any way in which it might be viewed, then it is the duty of the court to withdraw from the jury that question.

As I say, that law is that all the damages that can be awarded against a surety on the bond where there is no malice alleged, where a party merely becomes responsible for the direct damages that have been caused, the damages must be strict and positive.

Taking into consideration the several causes, contemporaneous, tending to interfere with the business of the Bucki Company, tending to injure their credit or break up their business, I was satisfied from the evidence that there could be no positive, certain or direct damages which could be charged to the issue of the attachments as separate and distinct from the other causes in the case.

I have therefore, as you have seen in the course of the case, granted a motion to exclude from your consideration all testimony as to damages for loss of credit and all testimony as to all profits the Bucki Company might have made in the future in procuring capital, in procuring lands, in procuring logging plants and procuring logs, at a profit, and so manufacturing lumber therefrom at a profit.

131 As I say, there was so much uncertainty, that there was no certainty under the law for determining what damages have been suffered by the party in this case.

I therefore instruct you gentlemen that the damage must be confined to the damages suffered by the detention of the mill for the time being. Those damages that have arisen by the detention of and taking the mill properties for the possession of the plaintiff.

To the giving of which instruction to the jury, the plaintiff then and there, and before the jury retired, excepted.

Ground 1st. That the plaintiff had the right to have submitted to the jury, whether or not the direct consequences of levying the writs of attachment prevented the plaintiff from continuing in business.

2nd. That the bringing of the common-law suit on Oct. 1st, 1897, and the refusal of the Atlantic Lumber Company to deliver any more logs did not necessarily prevent the plaintiff from continuing in business.

3rd. That the bringing of the common-law suits, and refusal to deliver logs, were, at best, only causes contributory to the consequences resulting from the attachments, and are inadmissable to def-at (defeat) the plaintiff's right to have submitted to the jury the question whether plaintiff could have continued in business if such attachments had not been issued and levied and damaged caused thereby.

And the testimony being as hereinbefore set forth in the bill of exceptions, the court was requested to instruct the jury as follows, to wit:

If the jury believes from the evidence that if these attachments had not been levied, the plaintiff had, or would have had and owned on October 1st, 1897, sufficient unincumbered property, real and personal, to have enabled it to supply its mill with logs and continue in business, then the fact that one of its drafts went to protest on June 2nd, 1897, and was paid the next day; and the fact that some of its drafts were protested between July 14th, and August 15, 1897, which were paid a few days after such protest, are entirely immaterial in this case upon the subject of its ability to have continued in business after October 1st, if these attachments had not been levied.

The important question is, what was its financial condition October 1st, 1897?

Which instruction the court refused to give, to which refusal the plaintiff then and there, and before the jury retired, except-, on the ground that it embodied a correct principle of law, and was essential to enable the jury to properly apply and give proper effect to the testimony.

And the testimony being as hereinbefore set forth in the
132 bill of exceptions, the court was requested to instruct the jury as follows, to wit:

It is in evidence that on the 6th day of February, 1899, the plaintiff mill properties were sold by the sheriff of Duval county on an execution issued on a judgment in favor of Schwaab for the sum of two thousand dollars, and the properties were purchased by one Henry Weiler. If you believe from the evidence that this sale was one of the direct consequences following these attachments, then the amount of damages should not be reduced because of such sale; in other words, if you believe from the evidence that the plaintiff incurred the indebtedness on which this judgment was recovered after October first, while engaged in a reasonable effort to do business, and that in consequence of such attachment, the plaintiff was not able to pay this debt and continue in business, then you will not diminish the amount of damages you award on the ground that such sale took place.

Which instruction the court refused to give the jury, because there was no evidence which would enable the jury to determine whether the sale was the result of the attachment, or the attendant circumstances. That it may have been *post hoc*, yet not *propter hoc*, to which refusal the plaintiff then and there, and before the jury retired, excepted, on the grounds that such request embodied a correct principle of law upon the facts therein stated, and was essential to enable the jury to properly consider the effect of such facts on the subject of the quantum of damages.

And there was testimony adduced by both parties tending to prove that there *was* numerous difficult questions of law and fact, which the plaintiff's attorneys were obliged to investigate in order to prepare for the trial of the motion to dissolve the attachment, and in the trial of the motion to dissolve the attachments for $75,000, on issues of fact, raised by the traverse affidavits and formal pleadings, and tending to show that said motion was tried before the issues of fact were made upon the merits of the action in which the said attachment was issued; and testimony also tending to establish that the same questions of law and fact that were involved in the trial of the said motion were also involved in the subsequent trial of the said action on the merits.

It was established that the writs of attachment herein were ancillary to two common-law suits; that the court on the motion of the L. Bucki & Son Lumber Company required the Atlantic Lumber Company to file formal pleadings as to the debt or sum demanded in the affidavits for attachments, and that these pleadings were treated as applicable to the common-law actions, as well as the attachment proceedings; that the two suits were consolidated
133 on motion of the Bucki Lumber Company; that afterwards, on motion of the Bucki Lumber Company, and against the protest of the Atlantic Lumber Company, the trial of the common-law action was continued, and a separate trial was given the Bucki Company on the motion to dissolve the attachment, which motion was tried on the issues produced by the formal pleadings. That

the issues arising upon these formal pleadings were substantially made up when this motion to dissolve the attachment was made, and that the common-law actions were subsequently tried on precisely the same issues, except after the attachment was dissolved the L. Bucki & Son Lumber Company put in a plea wherein it pleaded a certain counter-claim by way of recoupment, which it had formerly plead by way of offset.

And JAMES F. C[illegible]EN, a witness for the plaintiff, testified that he was a lawyer by profession and had participated in the conduct of these attachment proceedings in the lower and appellate courts; that with the exception of some objections made to the manner of executing the attachment bonds, and the right to attach for unliquidated damages, and the question of the — of Atlantic Lumber Company to sue out a writ of attachment for the money that fell due October 1st, 1897, the same questions were involved in the disposition of the common-law action as were involved in the attachment proceedings, and that the Bucki Company's attorney, with the exception mentioned, would have been compelled to give the same consideration to these questions in the defense of the common-law action, even though no attachment had been issued. And that, had the common-law action been tried at the same time as the motion to dissolve the attachment was tried, judgment must necessarily have resulted for the L. Bucki & Son Lumber Company in said common-law action on those counts of the declaration on which the attachment was predicated.

And the same witness testified that at the trial of the common-law action on the merits the Atlantic Lumber Co., by its counsel, produced a statement of what it expected to prove to sustain the counts of the declaration upon which the attachment for $75,000 was based, and that such statement embodied substantially the evidence adduced at the trial of the motion to dissolve the attachment, and that the court, after hearing the said statement read, ordered judgment for L. Bucki & Son Lumber Co. upon the counts aforesaid.

And the same witness testified that with the exception of *the exception of* attaching for unliquidated damages every question discussed by counsel for the Bucki Co. in the appellate court applied to the common-law action to the same extent that it applied to the attachment proceedings.

134 And thereupon the plaintiff requested the court to give to the jury the following instructions:

The court further instructs you that the plaintiff had the right to have the motions to dissolve the attachments heard and tried separately from the trial of the merits of the cases of The Atlantic Lumber Company against The L. Bucki & Son Lumber Company, and plaintiff was not obliged to wait until the issues of the merits of said cases had been made up before the said motion was tried; and in answering the questions as to the amount of such attorney's compensation, you will not diminish such amount, because at the trial of the said cases on the merits subsequently had, some of the same

questions of law and fact were involved on the trial of such cases on the merits, as had been previously involved on the trial of the motions to dissolve the attachments; providing you find from the evidence that all the services rendered by such attorneys in preparing for the trial, and on the trial of such motions, were caused and were the direct and proximate consequence of the issuing of such attachment.

And the court refused to give the said instructions, and to the ruling of the court, refusing to give said instructions to the jury, the plaintiff then and there, and before the jury retired, excepted, on the ground that the same embodied correct propositions of law, applicable to the material question in the case.

The court, of its own motion, gave to the jury the following instructions, to wit:

"The defendant in this case was not the original actor in bringing these suits, or suing out these attachments; they gave bond to pay all damages arising out of the improperly suing out of the attachments. A party has a perfect right to sue out an attachment by becoming liable to pay all damages; there is no law against it; it is not a tort; but he becomes responsible to pay all damages from the issuing of the attachment."

And to the giving of said instruction and charge to the jury, the plaintiff then and there, and before the jury retired, excepted, on the ground that it embodied erroneous rules of law, and was calculated to mislead the jury and produce a wrongful impression upon their minds, because suing out an attachment improperly is a tort if the attachment is not sustained.

The court submitted to the jury the question of the amount of reasonable attorneys' fees which the plaintiff was entitled to recover, in the words and figures following, to wit:

In making up your verdict you will find and assess the total amount of damages the plaintiff has sustained, exclusive of reasonable attorneys' fees for services rendered by the plaintiff's attorneys in preparing for and on the trial of the motions to dis-
135 solve the two writs of attachment; and in addition to the amount so found, you will also find and assess separately such sum of money as upon the evidence you believe to be a reasonable compensation for the services rendered by the plaintiff's attorneys in preparing for the trial of and on the trial of the two motions to dissolve the attachments, and in resisting the efforts of the Atlantic Lumber Company to have the judgment dissolving such attachments reversed in the United States circuit court of appeals, and in the Supreme Court of the United States. The court has prepared the form of your verdict as follows:

United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

We, the jury, find for the plaintiff and assess its actual damages, exclusive of attorneys' fees at —.

And if the court be of the opinion that as a matter of law the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of — as a reasonable and just fee for the services proven.

—— ——, *Foreman.*

And the said judge, under the charge, and with the directions aforesaid, submitted the said issues, with the evidence so given on the said trial, to the jury, and the jury aforesaid then and there gave their verdict in the words and figures following, to wit:

United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

We, the jury, find for the plaintiff and assess its actual damages, exclusive of attorneys' fees at $10,880.00.

And if the court be of the opinion that as a matter of law the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of $7,500 as a reasonable and just fee for the services proven.

WM. MICKLER, *Foreman.*

136 And thereupon the plaintiff moved the court to enter judgment against the defendant in favor of the plaintiff upon the said verdict for the full amount thereof, including the said sum of seventy-five hundred dollars, found as aforesaid by the said jury as a reasonable and just fee for plaintiff's attorneys for services in obtaining a dissolution of the said attachments.

And afterwards, on plaintiff's said motion for judgment, the court refused to include in the said judgment the said amount of attorneys' fees so found by the jury, to which refusal, the plaintiff then and there excepted, on the ground that the plaintiff had a legal right to have the amount found due for attorneys' fees embraced in the said judgment.

Whereupon, the court aforesaid, on the eighth day of February, A. D. 1900, at the term aforesaid, did render judgment in favor of the said plaintiff and against the said defendant for the sum of ten thousand eight hundred and ninety-five $\frac{4}{100}$ dollars damages and — dollars costs, as appears of record, and inasmuch as the said several matters objected to or insisted upon and considered by the court, do not appear by the record of the verdict and judgment aforesaid, the

said plaintiff, by its counsel aforesaid, did then and there propose this, its bill of exceptions, to the said opinions and decisions of the said judge and request him to sign the same, according to the form of the statute in such case made and provided, which is done this 15th day of March, A. D. 1900.

JAMES W. LOCKE, *Judge.*

(Indorsed:) L. Bucki & Son Lumber Company *vs.* Fidelity and Deposit Company. Plaintiff's bill of exceptions. Filed this 16th day of March, 1900. E. O. Locke, clerk, by Louis Starke, deputy.

Know all men by these presents, that we, Charles Lloyd Bucki, and Horatio Bisbee, are held and firmly bound unto The Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of Maryland, in the penal sum of one thousand dollars, for the payment whereof, well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this fifteenth day of March, A. D. 1900.

The condition of the foregoing obligation is such, that whereas, L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, has sued out a writ of error from a judgment of the circuit court of the United States, in and for the southern district of Florida, rendered
137 on the eighth day of February, A. D. 1900, in a certain cause therein lately pending, wherein the said L. Bucki & Son Lumber Company was plaintiff and the said The Fidelity & Deposit Company of Maryland was defendant, returnable to the United States circuit court of appeals on the second day of April, A. D. 1900. Now, if the said L. Bucki & Son Lumber (Company) shall prosecute its said writ of error to effect, and if it fail to make its plea good, shall answer all costs, then this obligation shall be null and void; else to remain in full force and virtue.

CHAS. LLOYD BUCKI. [SEAL.]
HORATIO BISBEE. [SEAL.]

Upon consideration the foregoing bond is approved and writ of error therein executed, mentioned, allowed. In open court this 15th day of March, 1900.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Bond for writ of error. Filed Mar. 15th, 1900. E. O. Locke, clerk.

UNITED STATES OF AMERICA, *ss:*

To the Fidelity & Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, Greeting:

You are hereby cited and admonished to be and appear at a circuit court of appeals of the United States, for the fifth circuit to be holden at New Orleans, Louisiana, on the second day of April, A. D.

1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Florida, wherein L. Bucki & Son Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, is plaintiff in error, against said The Fidelity & Deposit Company of Maryland, a corporation as aforesaid, defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned, entered on the eighth day of February, A. D. 1900, should not be corrected, and speedy justice not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fifteenth day of March, in the year of our Lord, one thousand nine hundred.

JAMES W. LOCKE, *Judge.*

Service of the foregoing citation accepted this 19th day of March, 1900.

R. H. LIGGETT,
Attorney for the Fidelity & Deposit Co. of Maryland.

(Indorsed:) Citation. Filed Mar. 15, 1900. E. O. Locke, clerk.

138 *Clerk's Certificate.*

United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

I, Eugene O. Locke, clerk of the above-mentioned court, do hereby certify that the foregoing pages numbered from one to 206, inclusive, constitute a true copy of the record of the judgment, assignment of errors and all of the proceedings in the above-entitled cause, which is of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of above court this 28 day of March, A. D. 1900, at Jacksonville, in said district.

[SEAL.] EUGENE O. LOCKE, *Clerk,*
By LOUIS STARKE, *Deputy.*

139 United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1899. May 29, 1900.

(*Extract from Minutes.*)

THE L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND. } No. 925.

This cause was regularly called this day and submitted to the court after argument by Mr. H. Bisbee for plaintiff in error and by Mr. R. H. Liggett for defendant in error.

November Term, 1900. May 28, 1901.

(*Extract from Minutes.*)

THE L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND. } No. 925.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Georgia and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by the court that the judgment of the said circuit court rendered in this cause on the 8th day of February, 1900, in favor of the L. Bucki & Son Lumber Company and against The Fidelity & Deposit Company of Maryland for the sum of ten thousand eight hundred and ninety-five $\frac{4}{100}$ dollars and costs, be, and the same is hereby amended by striking out the words "ten thousand eight" and inserting the words "eighteen thousand three" so that said judgment shall read as follows:

140 "It is therefore considered and so ordered and adjudged that the plaintiff, The L. Bucki & Son Lumber Company, do have and recover of and from the defendant, The Fidelity & Deposit Company of Maryland, the sum of eighteen thousand three hundred and ninety-five $\frac{4}{100}$ dollars ($18,395.04) damages, together with the costs of this cause in this court to be taxed, for all which let execution issue" and as thus amended, said judgment be and the same is hereby affirmed.

It is further ordered and adjudged that the defendant in error, The Fidelity and Deposit Company of Maryland, be condemned to pay the costs of this cause in this court for which execution may be issued out of said circuit court.

141 *Petition for Rehearing.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 925 and 926.

THE L. BUCKI & SON LUMBER COMPANY, Plaintiff in Error,
versus
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant in Error. } No. 925.

and

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
versus
THE L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } No. 926.

Original record filed June 17, 1901.
U. S. circuit court of appeals, filed Jun- 22 1901 J. M. McKee.

142 In the United States Circuit Court of Appeals for the Fifth Circuit.

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
versus
THE L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } No. 926.

THE L. BUCKI & SON LUMBER COMPANY, Plaintiff in Error,
versus
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant in Error. } No. 925.

Now comes the Fidelity & Deposit Company of Maryland by its attorney and prays that the court will set aside its judgment hereinbefore entered, and grant the said Fidelity Company a rehearing of the above-entitled causes, which were argued and submitted as one, for the following reasons:

1st. It is respectfully submitted that the measure of damages on an attachment bond is not in any respect regulated by State or local law, but by the common or general law; and the decisions of the Supreme Court of the United States are opposed to the allowance of attorneys' fees as damages in suits upon a bond of the kind of that sued upon.

2nd. The entry of judgment by the appellate court upon the special verdict for $7,500 on account of attorneys' fees, was without authority of law, and deprived the Fidelity Company of its property without due process of law, since by such action of the court the Fidelity Company was deprived of the opportunity to assign errors to the rulings of the circuit court, made in connection with the admission and rejection of evidence upon the subject of attorneys' fees, and thus was denied the right of appeal secured to it by law.

3rd. The Fidelity Company reserved various exceptions to the ruling of the circuit court on the admission and rejection of evi-
143 dence on the subject of attorneys' fees, and the entry of judgment upon the special verdict by the appellate court deprived the Fidelity Company of the opportunity to have such rulings reviewed, because of the fact that the judgment on the special verdict having been for the Fidelity Company in the court below, it was not in a position to reserve a bill of exceptions presenting such objections, and had no opportunity to take a writ of error, so as to present such exceptions to this court.

4th. The entry of judgment by the appellate court on the special verdict, would only have been justified in case the circuit court committed no errors against the Fidelity Company in the admission and rejection of evidence touching the subject of attorneys' fees, and as the appellate court could not know that such was the fact, it should not have entered judgment upon such special verdict, and the effect of such action was to deprive the Fidelity Company of the right to review any errors which the circuit judge might have made in the

admission or rejection of evidence in connection with the matter of attorneys' fees.

The statutory right of the Fidelity Company to have the rulings of the circuit judge in connection with the admission or rejection of evidence on the subject of attorneys' fees, reviewed, can only be secured to it by a reversal of the final judgment entered in this case, and by sending this case back to the circuit court with instructions to award a new trial.

5th. This honorable court appears to have overlooked the Fidelity Company's 14th assignment of error, (No. 926—page 35, 13th exception, page 49), which relates to the action of the circuit court in permitting the Bucki Company to prove as an element of damages, that it employed four watchmen to watch the mill property during the time of the lien of the attachment, a period of about one year, it being the universal rule that no such damages can be recovered.

6th. This honorable court appears to have overlooked the 15th assignment of error, (No. 926, page 36, and 14th exception, page 49), which relates to the action of the court in refusing to permit the Fidelity Company to prove that the Bucki Company sold its lumber, and made use of the money immediately upon its receipt, and at the same time in effect instructing the jury, that, in contemplation of law, the Bucki Company actually held the proceeds of such lumber for the indemnity of its surety upon the forthcoming bond, and that the Bucki Company would be entitled to recover from the Fidelity Company all damages sustained by reason of the loss of the use of such funds.

In this connection the court is further referred to page 70
144 of the record in 926, where the following charge of the court is to be found:

"After giving the forthcoming bond for the personal property, to wit: the logs and lumber levied upon, the plaintiff held such property as bailee for the sheriff, and was bound to deliver such property back into the sheriff's possession, whenever said sheriff demanded said property for the purpose of selling the same to satisfy any judgment that the court might render in the attachment suit. If the plaintiff sold such personal property, after giving such forthcoming bond, in contemplation of law, the plaintiff held the proceeds of such sales in its hands, and has the legal right to hold such proceeds in its hands, to pay any judgment that may hereafter be recovered against it in the suit in which the attachments were issued, until the lien of such attachments ceases to exist."

The result was that the jury were at liberty to presume that the Bucki Company had sustained serious damages by reason of retaining possession of the proceeds of the sale of the lumber, notwithstanding the fact that the Fidelity Company had been denied the right to prove that the Bucki Company had used the proceeds of such lumber in the ordinary course of business, since received.

It is respectfully submitted that the judgment of this honorable court should be set aside, and a rehearing of this cause awarded.

R. H. LIGGETT,

Attorney for the Fidelity & Deposit Company of Maryland.

Certificate.

This is to certify that in my opinion the foregoing petition for a rehearing is well founded, and that a rehearing should be allowed the Fidelity & Deposit Company of Maryland in this cause.

R. H. LIGGETT,
Counsel for the Fidelity & Deposit Company of Maryland.

145 November Term, 1901. November 26, 1901.

(*Extract from Minutes.*)

L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND. } No. 925.

Ordered that the petition for rehearing filed in this cause be and the same is hereby denied.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1900.

L. BUCKI & SON LUMBER COMPANY, Plaintiff in Error,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant in Error. } No. 925.

FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } No. 926.

Error to the United States circuit court for the southern district of Florida.

Before Pardee, McCormick, and Shelby, circuit judges.

McCORMICK, circuit judge, delivered the opinion of the court.

146 The proceedings to review which these writs of error were sued out were had in an action brought by the L. Bucki & Son Lumber Company against the Fidelity & Deposit Company of Maryland on two attachment bonds given in two actions brought by the Atlantic Lumber Company on October 1, 1897, on which bonds the Fidelity & Deposit Company of Maryland bound itself as surety. The cases in which the bonds were given are sufficiently stated in the decisions of this court as reported in 92 Fed. 865–867, and 93 Fed. 765, 766. The purpose of this action on the bonds is to recover all costs and damages sustained by the plaintiff therein in consequence of the improper suing out of the writs of attachment in the cases in which the bonds were given, according to the condition of the bonds and of the statute requiring them. This

action was brought in the State court and removed to the United States circuit court by the defendant. The declaration consists of two counts. Each of these counts respectively sets forth the affidavit upon which the writ was issued, the bond, the writ, and a description of the property levied on, and alleges that for several years prior to, and on the day the writs were levied, the plaintiff had been engaged in doing, and was then engaged in doing, a prosperous business of manufacturing and selling hard-pine timber and lumber; that the daily product of its mill was about one hundred thousand feet; that the interruption, suspension and destruction of its business and credit, in consequence of the attachments, and the costs, attorneys' fees and expenses incurred in preparing for and on the trial of the motions to dissolve the attachments, and other damages occasioned thereby, had damaged the plaintiff in stated large amounts, and that the damages sustained had not been paid. The defendant filed numerous pleas, all of which were disposed of on demurrer, except the plea of *non-damnificatus*, and the issues raised by that plea were the only issues of fact raised by the jury. Among these issues of fact the court submitted to the jury the question of the amount of the reasonable attorneys' fees which the plaintiff was entitled to recover, in words and figures following, to wit:

"In making up your verdict you will find and assess the total amount of damages the plaintiff has sustained, exclusive of reasonable attorneys' fees for services rendered by the plaintiff's attorneys in preparing for and on the trial of the motions to dissolve the two writs of attachment; and in addition to the amount so found, you will also find and assess separately such sum of money as
147 upon the evidence you believe to be a reasonable compensation for the services rendered by the plaintiff's attorneys in preparing for the trial, and on the trial, of the two motions to dissolve the attachments, and in resisting the efforts of the Atlantic Lumber Company to have the judgment dissolving such attachments reversed in the United States circuit court of appeals and in the Supreme Court of the United States. The court has prepared the form of your verdict as follows:

'We, the jury, find for the plaintiff and assess its actual damages, exclusive of attorneys' fees, at —

'And if the court be of the opinion that, as a matter of law, the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of — as a reasonable and just fee for the services proven.'"

Under the foregoing instruction, and other instructions which the court gave, the jury returned a verdict for the plaintiff assessing its actual damages, exclusive of attorneys' fees, at $10,880. And as to the attorneys' fees the verdict proceeds in these words: "And if the court be of the opinion that, as a matter of law, the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of $7,500 as a reasonable and just fee for the services proven." On the return of this verdict the plaintiff moved the court to enter judgment in its favor against the defendant for the full amount thereof, including the sum of $7,500 as attorneys' fees for

services in obtaining a dissolution of the attachments. After due consideration of the matter, the circuit court refused to enter judgment on the verdict for $7,500 attorneys' fees, and rendered its judgment in favor of the plaintiff and against the defendant for the sum of $10,895.04 damages, and for costs.

Each of the parties sued out a writ of error. Thirty-seven errors are assigned by the L. Bucki & Son Lumber Company on its writ of error, and thirty-nine by the Fidelity & Deposit Company on its writ of error. The respective assignments together fill twenty-seven pages of the printed records. Of these numerous errors thus elaborately assigned we deem it necessary to notice only one (the 35th), assigned by the Bucki Company. It is stated in these words:

"The court erred in excluding from the judgment the sum of $7,500 which the jury found specially in their verdict, as a reasonable compensation for plaintiff's attorneys for services rendered on the trial of and preparing for the trial of the motion to dis-
148 solve the attachment. This was error on the following grounds, to wit:

(1.) Because the amount of reasonable attorneys' fees was an element of damages sustained by the attachments.

(2.) Because it was a question of local law, arising upon a statute of Florida authorizing the issue of attachments, and providing the condition of the bond upon which attachments can issue.

(3.) Because the supreme court of Florida had previously decided that reasonable attorneys' fees on such a motion are proper elements of damages, and such decisions of the supreme court of Florida were obligatory upon the Federal court."

The statute of Florida which required the giving of the bond on which these actions are based fixes the condition of the bond as follows: "conditioned to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out said attachment." Rev. Stats. Fla. 1892, sec. 1646.

The plaintiff in the attachments claimed in the aggregate, and in round numbers, the sum of $85,000, and the writs were so levied as, for a time at least, to stop the operations of a saw-mill plant with a capacity of about one hundred thousand feet of sawed timber and lumber per day. The most vital feature of the levy was the placing of it on the accumulation of logs held on hand to meet the daily consumption of the mill. Of the gravest effect, but somewhat less than that of the levy on the logs, was the levy on the stock of sawed timber and lumber manufactured to meet current contracts. And a very serious effect on the business of the defendant in attachment was the levy of the writs (for so large a claimed indebtedness) on the real estate, including as it did the land and fixtures constituting the saw-mill plant. The harshness of the use of the extraordinary process of attachment is recognized by the statutes of Florida, which provide that the court to which an attachment is returnable shall always be open for the purpose of hearing and deciding motions to dissolve it. Rev. Stats. Fla. 1892, sec. 1656. When an attachment is run on property necessary for the conduct of a going business which the levy of the attachment for the time being destroys or sus-

pends, or seriously impedes, nothing can be more natural and urgent from a business point of view than the moving by the defendant in attachment for its dissolution. Such a motion so urgent and
149 essential requires for its conduct the services of an attorney of ability and skill, whose reasonable compensation will be proportioned to the interests and questions involved. There could hardly be a more direct consequence of the levy of such a writ than this; and we concur in the earnest suggestion of the counsel for the plaintiff in error that the reasonable compensation to the attorney for presenting and conducting such a motion is as direct a consequence of the levy of the writ as is the cost of the filing of the motion to dissolve it.

It is stated by counsel that the learned judge who presided at the trial announced that the case of Oelrichs *vs.* Spain, 15 Wall. 211, should be followed. That case has some historic interest on account of the subject-matter of the original bill and the prominence of several of the actors in the transactions out of which the litigation grew. The immediate case was a suit in equity on a bond or bonds given to procure an injunction which restrained the defendant in the injunction proceedings from drawing money from the Federal Treasury until the further order of the court. In the case in which the bonds were given no motion was made to dissolve the injunction, and no professional services were rendered in obtaining its dissolution distinct from the services required in the conduct of the proceedings to the hearing and on the hearing of the bill on the merits. The writ was never dissolved until and except by the final decree. The payees in the bonds were largely successful on the merits.

Counsel for the defendant in error in his brief makes this statement: "In fifteen States and the Territory of New Mexico, attorneys' fees are recoverable on attachment bonds, but in six of those, namely, Louisiana, Kentucky, Ohio, Illinois, Minnesota, and New York, they are not recoverable when the defense of the attachment proceedings involved the merits. In two of the States mentioned, namely, Washington and Iowa, the recovery of attorneys' fees on attachment bonds *are* expressly provided for by statute, and the same may be true of some of the others." Counsel for the plaintiff in error in his brief states: "An examination of the text books and digests of decisions will, we believe, establish that in thirty-eight States of the Union such fees are held a proper element of damages. In the other States the question is controlled by statute, or by antiquated views of public policy." The plaintiff in error contends that in this case it is a question of local law; that it arises from the State statute, and could never have arisen if the statute had not required such a bond to be given.

150 In the matter of injunctions to stay proceedings at law the Florida statute provides that if the application be to stay the proceedings before verdict or inquest of damages, the applicant must enter into bond conditioned "to pay to the plaintiff all damages, losses, expenses, and charges which he may have sustained or have been put to by reason of the issuing of the injunction if the injunction shall be dissolved, or the bill upon which it was granted be dis

missed;" or if the application be to stay the proceedings after verdict or inquest of damages, "to pay the debt, interest enjoined and such damages as may be occasioned by the wrongful issuing of the injunction if the injunction be dissolved, or the bill upon which it was granted be dismissed."

In Wittich *vs.* O'Neal, 22 Fla. 592, the condition of the bond sued on was that if the obligors "shall pay to W. L. Wittich all damages he may sustain by the issuing of the injunction in case the injunction be hereafter dissolved, then this obligation to be void." On that bond an injunction had been issued in a suit pending at the time of the execution of the bond between the surviving partners of the firm of Keyser, Judah & Co. and W. L. Wittich. This injunction was dissolved by the judge of the court on the application of Wittich on the 6th of April, 1881, and a final decree dismissing the bill was rendered on the 9th of April, 1885. In a suit on the bond given to obtain the temporary injunction the question arose, and was fully considered, "are counsel fees, incurred to dissolve the injunction, damages that may be recovered?" On that question the supreme court of Florida said: "If the plaintiff was compelled to employ counsel to dissolve the temporary injunction, it is clear that he was damaged to that extent, and the question above mentioned arises as to whether such damages are recoverable or not." The opinion then proceeds to cite, with emphatic approval, the case of Ah Thaie *vs.* Quan Wan & Kan Se, 3 Cal. 216, in which case the California court cited and followed the decision of Chancellor Walworth in Edwards *vs.* Bodine, 11 Paige Ch. Repts. 224, 225. And the Florida court further say that the same principle has been upheld in the following cases: Darby Bank *vs.* Heath, 25 N. H. 524; Collins *vs.* Sinclair, 51 Ill. 328; Behrens *vs.* McKenzie, 23 Io. 341; Reece *vs.* Northway, 58 Io. 187; Brown *vs.* Jones, 5 Nev. 374, 377; Livingston *vs.* Exhum, 19 S. C. 223, 229. And add: "Many other cases might be cited to the same effect." After referring to Oelrichs *vs.* Spain, and quoting extensively the language of an opinion in that case on the sub-
151 ject, the court refers to Oliphant *vs.* Mansfield, 36 Ark. 191, and Wood *vs.* State, a then recent case from the court of appeals of Maryland (announced July 15, 1886), and say that these cases are based on Oelrichs *vs.* Spain, and contain no argument or reasoning that is not found in that case; and conclude their opinion on this subject in these words: "Against such an array and weight of authority as sustain the conclusion of the court, as expressed in 3 California, 216, in favor of the principle that attorney fees are recoverable in a suit on an injunction bond, we are loth to follow the few authorities that hold the contrary, in the absence of some controlling argument or reason that would convince our judgments of the correctness of these conclusions. The reasons set forth in Oelrichs *vs.* Spain are to our minds not satisfactory, and we think are fully answered in the brief of counsel for appellant."

The case of Gonzales *vs.* Tobacco Co., 26 South, 1012, was a writ of error taken from a judgment of the circuit court of Duval county, Florida, rendered by a referee in an action at law to recover dam-

ages upon an attachment bond executed by Gonzales and two sureties, payable to the tobacco company, conditioned in accordance with the requirements of the statute, to well and truly pay all costs and damages the defendant may sustain in consequence of improperly suing out a certain attachment against the goods and chattels of defendant in error by Gonzales. The declaration alleged the giving of the bond, the condition thereof; that the attachment was shown and proven to have been improperly sued out by the result of a trial had May 25, 1892, when Gonzales had to dismiss, and did dismiss, his suit on which the attachment was drafted, and with which it was connected, a part and parcel thereof; and claimed as damages sustained in consequence of improperly suing out the attachment, among other things, certain sums for attorneys' fees and costs and expenses incurred by defendant in error. Gonzales filed a plea in offset, alleging that the plaintiff was, before and at the time of the commencement of the suit, indebted to him in the sum of $562, together with interest thereon from June 30, 1891, "as follows," giving particulars. A demurrer to this plea was sustained. Other pleas were subsequently filed upon which issue was joined, one of which alleged that the attachment proceeding in which the bond sued upon was given was ancillary to a suit in assumpsit; that no trial was had as to the sufficiency of the attachment proceeding, but that all proceedings, attorneys' fees, costs of court, fees of witnesses, etc., alleged in the declaration were had and incurred in and about the defense of the suit in assumpsit as to which the attachment was ancillary. The record did not show whether the principal suit was begun by the attachment, or whether the latter was sued out after the institution of the former. The writ was levied upon certain personal property belonging to the defendant in attachment, which remained in the hands of the officer for about ten months, when, on motion of Gonzales, the plaintiff in the suit, the principal suit was dismissed at his cost, with an order to the officer to deliver the attached property to the defendant in attachment. From the evidence it appeared that a motion to dissolve the attachment had been filed, but the grounds of this motion were not stated, nor did it appear that any expenses or attorneys' fees were incurred in relation thereto. It did appear that the attachment was *ipso facto* dissolved by the dismissal of the principal suit, and that the dismissal of the latter was a voluntary act upon the part of the plaintiff in the suit. The referee found that the measure of damages to be recovered by the defendant in attachment was the interest on the value of the goods for the time they were in the custody of the sheriff (the goods not being materially damaged), and costs and expenses, including attorneys' fees, of procuring a release of the property from the attachment. Several grounds of error were assigned, but the court did not deem it necessary to pass upon any of them except those relating to the rulings upon the demurrer to the plea of set-off and the motion for a new trial. As to the first it held that the set-off was not well pleaded. As to the second the court said: "The motion for a new trial ought to have been granted. The only evidence relative to damages claimed on account of costs,

152

expenses, and attorneys' fees, was the testimony of T. F. McGourin, a witness for defendant in error, (the tobacco company). Upon his direct examination he was asked if the defendant in error had been to any cost and expense in direct consequence of the attachment and seizure of the goods. He replied affirmatively, and gave in detail the following items: 'Attorneys' fees, $80; six depositions, at $5 each, $30; six witnesses, at $1.25 each, $7.50; Wolfe's expenses, $22; McGourin's expenses, $44; total, $183.50.' On cross-examination this witness stated that the 'attorneys' fees were paid in defense of the main case;' that the depo-
153 sitions were taken to cover testimony that was intended to be used at the hearing of the main case; 'that the expenses of Mr. Wolfe were incurred for his presence here (in Jacksonville) at the time of the main trial;' that 'those expenses were incurred at the time that the case was tried in which Mr. Gonzales was complainant and the De Funiak Tobacco Company was defendant, in which Mr. Gonzales claimed that an amount was due him on salary.' In answer to the question, 'this dismissal of the case was dated May 25, 1892; were any of these costs incurred about that time?' He said, 'Yes, sir, I think they were all about that time. I think they were incurred by reason of that suit.' Although this witness stated upon direct examination, in a general way, that these fees and expenses were incurred in direct consequence of the attachment of the goods, his cross-examination explained what he meant by that statement, and developed the fact that they were all incurred in defence of the main suit, and not in any proceeding to test the propriety or procure the dissolution of the attachment, thereby fully establishing the truth of one of the pleas then in issue before the referee. There was nothing to contradict the testimony of this witness, and consequently no evidence upon which the referee could properly base a finding for these items. As his finding and judgment clearly embraces them, the motion for a new trial was well taken. The condition of the bond is to 'pay all costs and damages the defendant may sustain in consequence of improperly suing out said attachment,' and this language will not admit of damages for expenses of defending the main suit. By the great weight of authority, while attorneys' fees and other expenses incurred in relation to the attachment or in relation to procuring its dissolution will be allowed as damages in actions upon attachment bonds, the fees and expenses incurred in defending the principal suit cannot be allowed, in the absence of statute or a stipulation in the bond to that effect. Wittich *vs.* O'Neal, 22 Fla. 592; Drake, Attachm., sec. 176; Sadler *vs.* Bean, 38 Io. 684; Frost *vs.* Jordan, 37 Minn. 544; Alexander *vs.* Jacoby, 23 Ohio St. 358; Bank *vs.* Wylie, 52 Hun. 146, 4 N. Y. Supp. 907; Damron *vs.* Sweetser, 16 Ill. App. 339. * * * The judgment is reversed, and a new trial granted."

Referring to this case the distinguished counsel for the defendant in error says: "It appears from the decision that no motion to dissolve the attachment was made, and that it was only dissolved as a result of a judgment for the defendant in the main action to
154 which the attachment was ancillary, and it was on this ground that a right to recover the fees was denied." After quoting

the closing paragraph of the foregoing excerpt from the opinion, the able counsel says: "It will be observed that the court viewed the subject of the allowance of attorneys' fees as damages as a question of general jurisprudence, and as one that is to be construed by the rules of decision of the common law, and in this way the case affords light on the subject, and in this way only, for the question now under consideration was not before the court, and what was said on the subject was merely an expression of opinion as to the weight of authority." The language just quoted suggests in a delicate and politic way that the question we are considering was not before the court, and that what was said on that subject was mere dictum. Section 1327 of the Revised Statutes of Florida provides that the judge of the supreme court of this State delivering the opinion of the court shall prepare and make a syllabus or statement of the points and principles intended to be decided by the court, which shall be filed with the opinion, and published in the reports at the beginning of the opinion, in lieu of that usually prepared by the reporter. In the report of this case the second paragraph of the syllabus is as follows: "2. Attorneys' fees and other expenses incurred in relation to the attachment, or in procuring its dissolution, are properly allowed as elements of damage in an action upon attachment bonds; but fees and expenses incurred in defending the principal suit cannot be allowed, in the absence of statute or a stipulation in the bond to that effect. (Syllabus by the court)."

We do not overlook the case of Hart *vs.* Stribling, 25 Fla. 435, in the report of which we find this in the syllabus: "1. Under the statute the judges of the supreme court of this State are required, in deciding cases, to prepare and make a syllabus of the points and principles intended to be decided by the court, which shall be published in the reports, in lieu of that usually prepared by the reporter. But where a judge who writes the opinion of the court expresses a view upon any point or principle which he is not required to decide, his opinion as to such point or principle is *obiter dictum*, and it is binding on no one."

Perhaps an exhaustive practical judicial definition of the much-used and abused term "dictum" cannot be evolved from reported decisions of approved authority. But accepting the definition expressed in the quotation just made from the syllabus in
155 Hart *vs.* Stribling as sufficient for our present discussion, we submit that it cannot fairly be contended that the judge who wrote the opinion of the court in Gonzales *vs.* Tobacco Company, and who in obedience to the requirement of the statute prepared the syllabus of the principles intended to be decided by the court in that case, expressed a view upon any point or principle which he was not required to decide. The allegation in the declaration was sufficient to admit proof of fees paid to an attorney for his services in connection with the attachment and its dissolution, as distinguished from his services in connection with the action of assumpsit on which the attachment was grafted. And this allegation is aided

by the plea of the defendant that the attachment was ancillary to a suit in assumpsit; that no trial was had as to the sufficiency of the attachment proceeding; and that all proceedings, costs of court, fees of witnesses, etc., alleged in the declaration were had and incurred in and about the defense of the suit in assumpsit to which the attachment was ancillary. The opinion puts emphasis on the fact that the only evidence relative to damages claimed on account of costs, expenses, and attorneys' fees was the testimony of one witness for the defendant in error; and in another place says: "There was nothing to contradict the testimony of this witness, and consequently no evidence upon which the referee could properly base a finding for these items. It does, however, clearly appear from the testimony of this one witness, and that, too, on his cross-examination, that there was a main trial of the case, and that this main trial took place, or at least terminated, on May 25, 1892, as alleged in the declaration." It is also clear, from the opinion, that this issue as to attorneys' fees being a proper element of damages in the case was the very one on which the court decided to reverse the judgment and to grant a new trial. Preparatory to the new trial the complainant, if he was so advised, could amend his declaration, and on the new trial additional testimony to that of the one witness examined on the first trial might be offered and admitted. It was therefore incumbent on the court to discuss this issue in the manner in which it did, and to announce the proper rule to be applied by the trial court on a second trial of the case. If the language of the opinion, and of the syllabus on that subject, is dictum, it is dictum of the highest grade, and of a grade so high that the line between it and authoritative decision is too shadowy to be discerned by average judicial acumen.

156 "Attachment is essentially a creature of the written law. Hence, but little assistance can be obtained in discussing this peculiar remedy by looking beyond the statute by which it is authorized. The force and effect of attachment laws can only be tested by the principles of statutory construction." 1 Wade, Attachm., sec. 2.

"The natural result of the matters thus briefly noticed is, to give this remedy a high practical importance, and to lead to a voluminous mass of judicial decisions, extending over a wider surface, and bringing into view a greater variety of legal doctrines, than would be conjectured by those who have not examined the subject. In relation to it there can, in the nature of our institutions, be no uniform system of statute law; but notwithstanding the inevitable diversity in this particular, there is a general unity of aim and result; so that principles and rules of identical import may be—and in numberless instances are—judicially established under statutes widely differing in details. Indeed, it may be questioned whether there is any other subject of equal extent in the administration of the law depending so entirely upon, and so exclusively regulated by statutory provisions, that would exhibit less diversity

of judicial decision than is connected with this." Drake, Attachm., sec. 8 (5th ed.)

"Questions of public policy, as affecting the liability for acts done, or upon contracts made and to be performed, within one of the States of the Union—when not controlled by the Constitution, laws or treaties of the United States, or by the principles of the commercial or mercantile law or of general jurisprudence, of national or universal application—are governed by the law of the State, as expressed in its own constitution and statutes, or declared by its highest court." Insurance Company *vs.* Railway Company, 175 U. S. 100.

"In its nature this remedy is certainly anomalous. As it exists under the custom of London, it has hardly any feature of a common-law proceeding. * * * In these (just mentioned) and other respects the proceeding under the custom has an individuality entirely foreign to the common law. Its peculiar features have in the main been preserved in its more enlarged and diversified development in this country." Drake, Attachm., sec. 4.

It has not been suggested, and cannot well be, that the questions we are discussing are controlled by the Constitution, laws or treaties of the United States, or by the principles of the commercial
157 or mercantile law or of general jurisprudence, of national or universal application; and hence they are governed by the law of the State as expressed in its own constitution and statutes, or declared by its highest court.

We therefore conclude that the judge of the circuit court erred in refusing to give judgment on that part of the verdict of the jury which reads: "And if the court be of the opinion that, as a matter of law, the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of $7,500 as a reasonable and just fee for the services proven;" and that the judgment, instead of being for only the sum of ten thousand, eight hundred and ninety-five and four one-hundredths dollars, should have been for the sum of eighteen thousand, three hundred and ninety-five and four one-hundre-ths dollars. In which respect, and to which extent, we now amend the judgment of the circuit court by striking out the words "ten thousand eight" and inserting the words "eighteen thousand three."

These two writs of error were submitted together and argued together before us nearly a year ago (May 29, 1900), since which time we have held them under examination and advisement, and have given the numerous assignments of error careful and diligent consideration. We find that the action of the learned judge who presided at the trial in the circuit court is in several particulars subject to the criticism which is leveled at it by some of the other numerous assignments of error made by the plaintiffs in error on their respective writs; but on the fullest consideration of the whole case, we conclude that the record presents no error on the part of the trial judge for which the judgment should be reversed, except the error that we have discussed, and its nature is such that we can and do correct it by

amending the judgment as above indicated. And thus disposing of both writs of error, the judgment of the circuit court is affirmed.

Endorsed: Filed May 28, 1901. J. M. McKee, clerk.

158 United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1900.

L. BUCKI & SON LUMBER COMPANY, Plaintiff in Error,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant in Error. } No. 925.

FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } No. 926.

Errors to the circuit court of the United States for the southern district of Florida.

Before Pardee, McCormick, and Shelby, circuit judges.

Mr. H. Bisbee for plaintiff in error in No. 925 and for defendant in error in No. 926.

Mr. R. H. Liggett for defendant in error in No. 925 and for plaintiff in error in No. 926.

SHELBY, circuit judge, dissenting:

This action was brought by the L. Bucki & Son Lumber Company, a corporation under the laws of New Jersey, against the Fidelity & Deposit Company of Maryland, a corporation under the laws of Maryland, to recover damages upon two attachment bonds executed by the latter company as surety.

159 For brevity the former company will be called the "Bucki Company," and the latter the "Fidelity Company."

A brief statement of the facts which led to and are involved in the litigation will be necessary: On the first day of October, 1897, the Atlantic Lumber Company sued out a writ of attachment for $9,980.80 and caused it to be levied on the lumber of the Bucki Company, consisting of about one million two hundred and fifty thousand feet. On the same date the Atlantic Lumber Company sued out another writ of attachment against the Bucki Company for $75,000 and caused it to be levied upon about three million five hundred thousand feet of timber and lumber and three million feet of logs in a boom and on the saw-mill plant of the Bucki Company. The sheriff took possession of the personal property levied on. On the 11th day of October, 1897, the Bucki Company, by executing a

forthcoming bond in accordance with section 1652 of the Revised Statutes of Florida, obtained possession of part of the personal property levied on, and on the 4th day of November, 1897, by the execution of a similar forthcoming bond, the Bucki Company obtained possession of the remainder of the personal property levied on. The sheriff held the logs and lumber levied on from October 1, to October 11, 1897. The mill was run from October 11, to about November 16, 1897, during which time all of the logs were cut into timber and lumber, amounting to about three million six hundred thousand feet. The Bucki Company did not operate the mill after November 16, 1897. On motion of the Bucki Company the attachments were both dissolved, and the result of the litigation in the attachment suits showed that they were improperly issued.

Under the laws of Florida no attachments shall issue until the person applying for the same shall enter into bond with sureties, payable to the defendant in at least double the debt or sum demanded, conditioned to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out the attachment. Revised Statutes of Florida, sec. 1646. The bonds sued on in this action were given under that statute. The Fidelity Company is a surety on each of the bonds. Each bond has the condition prescribed by the statute "to pay all costs and damages" which the Bucki Company may sustain in consequence of it, the said Atlantic Lumber Company, "improperly suing out said attachment." The declaration recited the proceedings in the
160 attachment cases, setting out the bonds and writs and levies, and claimed damages for the interruption, suspension, and destruction to the Bucki Company's business and credit in consequence of such attachments, and also claimed costs and attorneys' fees and expenses incurred in preparing for and on the trial of the motions to dissolve the attachments.

The case went to trial on the plea of *non damnificatus*, and much evidence was offered relating to the operations of the mill, the amount of lumber sawed, the amount sold, the prices received, and the profits made. Evidence was also offered as to the effect of the attachments upon the credit of the Bucki Company and on the question as to whether its credit was good or bad prior to the attachments. Evidence was also offered as to reasonable attorney fees for procuring the dissolution of the attachment. The Bucki Company requested the court to charge the jury that it was entitled in this action to recover for the injury to credit and loss of profits in its business. These requests were made in sixteen separate charges, which were refused by the court, and the refusal of each is here assigned as error. Two of the requested charges presenting the questions are selected: (1.) "It is a question of fact for you to determine whether or not if these attachments had not been issued and levied, the plaintiff would have been able to supply its mill with logs and continued in its business and the amount of profits it would have made in such business in case said attachments had not been issued, provided you believe from the evidence that the direct consequences

of such attachment caused the plaintiff to cease continuing in business and that plaintiff would have and could have continued in business if such attachments had not been issued and levied and continued upon plaintiff's properties." (2.) "If you believe from the evidence that the issuing and levying of these writs of attachment injured or impaired the credit or financial standing of the plaintiff as it existed on October 1st, 1897, then the plaintiff is entitled to recover such damages for injury to its credit as you find from the evidence the plaintiff sustained as a direct consequence of the issuing and levying of such writs upon the properties of the plaintiff."

The evidence tended to show that $7,500 would be a reasonable compensation for the attorney for procuring the dissolution of the attachments. The court refused to permit the attorney's fees to be estimated as a part of the damages, and the Bucki Company reserved an exception.

There are other assignments of error by the Bucki Company,
161 but those that are material raise questions that are involved in the assignments stated. The Fidelity Company also reserved a bill of exceptions. It assigns that the court erred in giving a number of charges relating to the business of the Bucki Company and its interruption by attachment. Two of those charges may be selected as presenting the questions involved: (1.) "Another element of damages claimed by the plaintiff is that the attachment interrupted its business and by such interruptions and the consequences thereof, resulting from the attachments, the plaintiff was prevented from sawing and shipping lumber to certain parties in Baltimore, New York and Boston, which plaintiff agreed to furnish prior to October 1st, 1897; that such losses consist of certain amounts the purchasers of the lumber had to pay to supply what they had purchased of plaintiff. The court instructs you that the defendant is liable for all such losses if any resulted as a direct consequence of the two attachments." (2.) "You are the exclusive judges as to the facts of this cause, you are the exclusive judges of the amount of damages the plaintiff sustained as the direct and proximate consequence of the issuing and levying of these writs of attachment. These damages consist of two general consequences: 1st. All moneys paid out and all expenses incurred in and about and attending to the preparation of the trial of the motions to dissolve the attachments and on the trial of such motions which become reasonably necessary as a direct consequence of such attachment. 2nd. All consequential damages, that is, all damages caused by the interruption of the plaintiff's business, either by disabling the plaintiff from operating its mill or disabling it to deliver timber and lumber it had agreed to deliver prior to October 1st, 1897, if you believe from the evidence that the direct and proximate effect of such attachments caused such interruption of the plaintiff's business." It is assigned here by the Fidelity Company that the court erred in giving the first charge above stated and in giving the second part of the second charge above stated. There was a verdict and judgment for the

Bucki Company against the Fidelity Company for $10,880, damages, exclusive of attorneys' fees, and each party sued out a writ of error.

1. The question as to attorneys' fees will be first considered.

In addition to the general verdict for the plaintiff, the jury found a special verdict as to the amount of attorneys' fees. They
162 found that $7,500 would be reasonable and just as attorneys' fees for the services rendered in procuring the dissolution of the attachments. The circuit court held that no judgment should be entered on this part of the verdict. The condition of the bond sued on is to pay "all costs and damages" which the defendant in the attachment suit may sustain in consequence of the attachment being improperly sued out. The word "costs" as used in the bond refers, I think, to such costs as the defendant would have the right to have taxed in his favor in the attachment proceedings. The word refers to such sums as are prescribed by law as charges for the services enumerated in the fee bill or bill of costs. The word "damages" means such damages as are legally recoverable. The question here is, of course, whether attorneys' fees paid in securing the dissolution of the attachment constitute such damages.

As early as 1796 a case came before the Supreme Court of the United States that involved the question as to whether counsel fees should be allowed as a part of the damages. The case is very briefly reported, and its nature does not fully appear. It does appear, however, that in estimating the damages the court below had allowed a charge of $1,600 for counsel fees, and the Supreme Court said that this ought not to be allowed. The general practice, the court said, in the United States is in opposition to it; and the court added that even if that practice were not strictly correct in principle, it is entitled to the respect of the court until it is changed or modified by statute. *Arcambel vs. Wiseman*, 3 Dall. 306.

In *Day vs. Woodworth*, 13 How. 363, it was held that counsel fees ought not to be included in and allowed as damages in any action at law. In this case the court called attention to the fact that the courts of common law should have an established system of costs which are allowed to the successful party by way of amends for his expense and trouble in prosecuting his suit, and that the taxed costs are often far below the real expenses incurred by the litigant; and yet, the court added, it is all the law allows as *expensa litis*.

Flanders vs. Tweed, 15 Wall. 450, was an action to recover damages caused by the alleged unlawful seizure and detention of cotton. In the itemized statement of damages found by the jury, and allowed by the circuit court, was an item of $6,000 allowed as lawyers' fees. The Supreme Court held that the judgment should be reversed and modified by disallowing this sum. See also *Pacific Ins. Co. vs. Conard*, 1 Baldwin, 138; Fed. Cas. No. 10,647.

In *The Nuestra Senora de Regla*, 17 Wall. 29, counsel fees for
163 $5,000 for defending against the illegal seizure and detention of a vessel were allowed by the lower court. The Supreme Court held "the allowance of counsel fees wholly unwarranted."

The case of *Bing Gee vs. Ah Jim*, 7 Fed. Rep. 811, was a suit on an

attachment bond. In that case the allegations concerning the expenses incurred in the employment of attorneys were, on motion of the defendants, stricken out of the complaint as immaterial.

The case of *Jacobus vs. Monongahela Nat. Bank of Brownsville*, 35 Fed. Rep. 395, was a suit for damages for wrongfully suing out an attachment. The court held, Judge Acheson delivering the opinion, that the plaintiff could not recover counsel fees paid in the attachment suit. This question, the court said, under the decisions of the Supreme Court of the United States must be answered negatively, and some of the cases are cited to which we have already referred.

It is true that in *Sonneborn vs. A. T. Stewart & Co.*, 2 Wood, 599, which was a suit for the malicious prosecution of a proceeding to have the plaintiff declared a bankrupt, Mr. Justice Bradley charged the jury that the plaintiff could recover his expenses for lawyers' fees in following up and setting aside the proceedings in bankruptcy. That case, however, was carried on writ of error to the Supreme Court of the United States and there reversed. Counsel representing the plaintiff in error, as shown by the brief, argued that the fees expended by the plaintiff in prosecuting or defending his case could not be allowed as any part of the damages. The Supreme Court said: "The fees of counsel in prosecuting this case were no part of the consequences naturally resulting from the action of the defendants in suing out the decree and warrant in bankruptcy. They were not what the defendants ought to have foreseen. That such fees are not recoverable, and why they are not, was clearly shown in *Good vs. Mylin*, 8 Penn. St. 51." Mr. Justice Bradley, who had presided on the trial in the lower court, dissented from the opinion of the court, remarking that the exception in regard to allowing fees in the suit by way of damages was not founded in truth. The court below, he said, expressly confined the jury to three specific grounds of damage, and this was not one of them. *Stewart vs. Sonneborn*, 98 U. S. 187, 197.

The case of *Oelrichs vs. Spain*, 15 Wall. 211, is considered a leading case on this question. It involves the question of the
164 assessment of damages upon the dissolution of an injunction. It was claimed that the enjoined party was entitled to include as damages the counsel fees paid in consequence of an injunction. The court commented on *Arcambel vs. Wiseman* and *Day vs. Woodworth*, *supra*, and then said: "The point here in question has never been expressly decided by this court, but it is clearly within the reasoning of the case last referred to, and we think is substantially determined by that adjudication. In debt, covenant and assumpsit damages are recovered, but counsel fees are never included. So in equity cases, where there is no injunction bond, only the taxable costs are allowed to the complainants. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large the *expensa litis* to which he may have been subjected. The parties in this respect are upon a footing of equality. There is no fixed standard by which the *honorarium* can be meas-

ured. Some counsel demand much more than others. Some clients are willing to pay more than others. More counsel may be employed than are necessary. When both client and counsel know that the fees are to be paid by the other party there is danger of abuse. A reference to a master, or an issue to a jury, might be necessary to ascertain the proper amount, and this grafted litigation might possibly be more animated and protracted than that in the original cause. It would be an office of some delicacy on the part of the court to scale down the charges, as might sometimes be necessary.

"We think the principle of disallowance rests on a solid foundation, and that the opposite rule is forbidden by the analogies of the law and sound public policy."

These authorities seem conclusive of this question looked at as a question of Federal jurisprudence. It is urged, however, that this court should be governed by the statutes and decisions in Florida. We are not cited to any statute of Florida that establishes a rule of damages in cases like this so as to include attorneys' fees. It is provided that an attachment shall not issue until the person applying for it gives a bond conditioned to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out the attachment. Revised Statutes of Florida, 1892, sec. 1646. This statute creates no rule as to damages that would include counsel fees. It merely provides for the giving of a statutory recognizance, which is not the foundation of a right of action, but security only for the payment of damages. The damages referred to are such as are legally recoverable.

165 In *Wittich vs. O'Neal*, 22 Florida, 592, the court held, in a suit on an injunction bond, that the counsel fees incurred by the defendant in the suit to dissolve such an injunction are damages that may be recovered. The conclusion of the court is sustained by the decisions of the courts of last resort in many of the States. The learned chief justice of Florida, who delivered the opinion of the court, admits that his conclusions are in direct conflict with the decision of the United States Supreme Court in *Oelrichs vs. Spain*, 15 Wall. 211, and says: "The reasons set forth in *Oelrichs vs. Spain* are to our minds not satisfactory, and we think are fully answered in the brief of counsel for appellant." I do not understand that this opinion is based upon the construction of a statute. The learned chief justice, as I understand it, is making the decision upon general principles. The decision involves the construction of the bond.

The only Florida case to which our attention is called which involves a suit on an attachment bond is *Gonzales vs. De Funiak Havana Tobacco Co.*, 26 Sou. Rep. 1002. This case was decided December 6, 1899, which is subsequent to the date and alleged breach of the bond sued on in the case at bar. When the facts of the case are examined, it will be seen that it involved the allowance of attorneys' fees to the amount of $80, which were paid in defense of the main case. The court held that such allowance was improper; that the

condition of the bond to pay all costs and damages the defendant may sustain in consequence of improperly suing out the attachment will not admit of damages for the expense of defending the main suit. That disposed of the whole case before the court so far as the question of attorneys' fees is concerned. The court, however, added by way of dictum, that, by the great weight of authority, attorneys' fees incurred in relation to the attachment or in procuring its dissolution will be allowed as damages in actions upon attachment bonds. But if this decision was in point, being rendered subsequent to the transactions involved in this suit, it would not be binding on this court. *Burgess vs. Seligman*, 107 U. S. 20, 33; *Bartholomew vs. City of Austin*, 85 Fed. Rep. 359.

I do not find from the examination of the authorities presented by counsel, or from my own investigation, that there are any statutes or decisions of the State of Florida that establish the rule that the plaintiff in a suit on an attachment bond can recover as a part of his damages counsel fees incurred in obtaining a dissolution of the attachment. As I do not find the law so established in the
166 State of Florida, it is unnecessary to consider whether State decisions to that effect would be binding upon this court, or whether it would be the duty of this court to construe the bond and follow the decisions of the Supreme Court of the United States. *Olcott vs. The Supervisors*, 16 Wall. 678, 688; *Boyce vs. Tabb*, 18 Wall. 546; *Foxcroft vs. Mallett*, 4 How. 353, 370; *Carroll vs. Carroll's Lessee*, 16 How. 275, 287; *Swift vs. Tyson*, 16 Pet. 1, 19.

Controlled by the decisions of the Supreme Court, I am constrained to dissent from the opinion just read and to hold that the circuit court did not err in refusing to enter judgment on the special verdict.

In 1796 the Supreme Court suggested that, if the practice of refusing to allow attorneys' fees as damages was not strictly correct in principle, it was entitled to respect until it was changed or modified by statute. *Arcambel vs. Wiseman*, 3 Dall. 306. That remark surely cannot have less force now, when the rule appears to have been followed by the Federal courts for more than a century.

II. The distinguished counsel for the Bucki Company says that "the court below refused to submit to the jury the question as to how much damages the plaintiff sustained by reason of losses by the interruption and destruction of its business caused by the attachment." After stating the grounds on which the court based its decision, the learned counsel adds: "This action of the court is assigned as error and presents the leading and most important question for review in this court." The question as presented by the evidence offered, the exceptions reserved, and the errors assigned is naturally divided into two inquiries: 1st. Is the Bucki Company entitled to recover for loss of profits caused by the attachment? 2d. Is the Bucki Company entitled to recover for injury to its credit caused by the attachment? There is seemingly a great deal of conflict in authorities on these questions. The apparent conflict arises from decisions in jurisdictions controlled by varying statutes and by the failure to note,

in commentaries on them, the difference in the kinds of actions in which the damages are being adjusted. It is important at the outset, therefore, to keep in mind the nature of this suit. It is an action for breach of two attachment bonds. The suit is by the payee of the bonds—the defendant in the attachment suit—against the surety on the bonds. They are statutory bonds, their condition being fixed by statute. The condition of each bond is
167 that the principal shall well and truly "pay all costs and damages" which the payee may sustain in consequence of the principal's "improperly suing out said attachment." The suit is not an action on the case against a plaintiff for maliciously suing out an attachment. In the latter case a very different rule as to damages prevails. There is no statute in the State of Florida which makes the obligors on an attachment bond liable in an action on the bond for such damages as the plaintiff is liable for in an action on the case for maliciously and vexatiously suing out an attachment. In States where there are such statutes they control the decisions of the courts of the States as to the measure of damages. In some of the States the grounds on which an attachment is sued out cannot be traversed, but the defendant may at once sue for damages, and the obligors on the attachment bond are made liable, if the attachment was sued out maliciously, for such damages as the plaintiff in the attachment suit would be liable for in an action on the case for the malicious prosecution of the attachment. In Florida the defendant in the attachment suit may traverse the plaintiff's affidavit and move to dissolve the attachment (Revised Statutes of Florida, sec. 1655), and on its dissolution may sue on the bond and is entitled to recover only "all costs and damages" which it has sustained from the improper suing out of the attachment. There being no statute otherwise fixing the measure or kind of damages to be recovered, and the bond sued on conforming to the statute, we are confronted with the questions: What damages can properly be included in the construction of the statute and bond?—what damages were within the contemplation of the makers of the law and the parties to the contract? It cannot be held that the words "all damages" are used in their broadest sense. In some actions injury to the feelings are included and considered in establishing a plaintiff's damages, but it would not be claimed that a bond of this kind would include damages of that character. The defendant in attachment in some jurisdictions can sue the plaintiff in such suit in an action on the case, and if it is proved that the attachment was vexatious and malicious, damages may be recovered for every kind of injury to credit, business, or feelings. To sustain such suit malice upon the part of the defendant and want of probable cause for the attachment must both be proved. In a suit on the bond for actual damages malice need not be shown, nor can the defendant defend by showing probable cause. Injuries that recovery could be
168 had for only when malice exists and want of probable cause is shown, cannot be considered or estimated as covered by the bond. The statute and bond could not be intended to cover dam-

ages that are allowed only in cases where malice and want of probable cause is shown, and at the same time dispense with the allegation and proof of malice and cut off the defense of probable cause. In suits on the bond malice need not be proved. The existence of probable cause is no defense. The two suits for damages being so unlike in the issues raised and proof required, it may be expected that the rules as to the measure and proof of damages would be different. The legislature, in passing the act to require the bond, did not intend to impose on the sureties a liability as great as that imposed by law on the plaintiff in cases of malicious attachment. The condition of the bond is satisfied and its terms substantially complied with by awarding the plaintiff all costs and expenses incurred and caused by the attachment, and such damages as he may have sustained by being deprived of his property, or the use thereof, or any injury thereto, or its loss or destruction. The makers of the bond in an action on it are not liable for anything beyond such actual damages as are the direct result of the attachment.

The general principles controlling these questions seem to be clearly indicated in the opinions of the Supreme Court.

In *Watson vs. Sutherland*, 5 Wall. 74, the court incidentally discussed the question which is involved here. It was a suit in equity to enjoin a levy on a miscellaneous stock of goods. The injunction was resisted upon the ground that the defendant had an adequate and complete remedy at law. The court therefore considered the question as to what damages could be recovered at law for the seizure and sale of the goods. The court said it was well settled that "the measure of damages, if the property were not sold, could not extend beyond the injury done to it, or, if sold, to the value of it, when taken, with interest from the time of the taking down to the trial." The court added: "Loss of trade, destruction of credit, and failure of business prospects, are collateral or consequential damages, which it is claimed would result from the trespass, but for which compensation cannot be awarded in a trial at law." *North vs. Peters*, 138 U.S. 271, 281, is to the same effect. In the case of *Vance vs. W. A. Vandercock Company*, (No. 2), 170 U. S. 468, the court again had under discussion the question as to what damages could be recovered for the unlawful or illegal seizure of personal property. Mr. Justice White, delivering the opinion of the court, said: "Under
169 the decisions to which we have referred, it is evident that, in the case at bar, the measure of damages for the detention was interest on the value of the property from the time of the wrong complained of. This rule of damages has been held by this court to be the proper measure even in an action of trespass for a seizure of personal property where the facts connected with the seizure did not entitle the plaintiff to a recovery of exemplary damages. An action of this character was the case of *Canard vs. Pacific Insurance Company*, 6 Pet. 262. In the course of the opinion there delivered by Mr. Justice Story, the court held that the trial judge did not err in giving to the jury the following instruction:

"'The general rule of damage is the value of the property taken,

with interest from the time of the taking down to the trial. This is generally considered as the extent of the damages sustained, and this is deemed legal compensation with reference solely to the injury done to the property taken, and not to any collateral or consequential damages, resulting to the owner, by the trespass.'

"Indeed the same rule was in effect reiterated in *Watson vs. Sutherland*, 5 Wall. 74, 79, where it was substantially held that 'loss of trade, destruction of credit and failure of business prospects' could not be recovered in an action at law where malice or bad faith was not an ingredient, because such damages were collateral or consequential as regards a seizure of personal property, and could only be recovered at law where the issue of bad faith was involved. In other words, that however at law such damages might be considered when the suit was based upon a malicious trespass they were not a proximate result of an injury to property caused by an illegal seizure thereof."

It follows, I think, that the Bucki Company is not entitled to recover in this action for the loss of profits in its business caused by the issuance and levy of the attachment, and that it cannot recover damages in this action for injury to its credit. *Pettit & Owens vs. Mercer*, 8 B. Moore (Ky.), 51; *Weeks vs. Prescott*, 53 Vermont, 57, 58; *Braunsdorf vs. Fellner*, 76 Wisconsin, 1, 3; *Seattle Crockery Co. vs. Haley*, 6 Wash. 302; 33 Pac. Rep. 650, 653; *Kirbs & Spies vs. Provine*, 78 Texas, 353; Sedgwick on Damages (8th ed.), § 127; Sutherland on Damages (2d ed.), § 55.

So far as the levy on the real estate was concerned, it did not operate any change of possession (Revised Statutes of Florida, sec. 1651), or cause any damage. *Trawick vs. Martin-Brown Co.*, 170 79 Texas, 460; *Brandon vs. Allen & Co.*, 28 La. Ann. 60. We have to deal with the measure of damages for the unlawful seizure, without malice, of personal property. Pardee, circuit judge, speaking for this court, said: "The measure of damage for the unlawful seizure, without malice of personal property, where the property is subsequently returned to the owner, is the difference between the value of the goods at the time and place of the unlawful taking and at the time and place where returned, in addition to the value of the use during the time of detention." *Coulson vs. Panhandle Nat. Bank*, 54 Fed. Rep. 855, 859. The Supreme Court applied this rule in the case of a trespasser. *Bates vs. Clark*, 95 U. S. 204. A surety on an attachment bond, with the condition as in this case, in the absence of malice, should not be held to a harsher measure of damages than that applied to a naked trespasser.

I think that the charges given by the circuit court are not in conformity with the law as held by the Supreme Court, and that the assignments of error made by the Fidelity Company as to the charges quoted are well taken.

Endorsed: Filed May 28, 1901. J. M. McKee, clerk.

171 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 172 pages, numbered from "*a*" to 171, inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court and the dissent therefrom in the case of

THE L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND } 925.

as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said United States circuit court of appeals at the city of New Orleans, this 30th day of January, A. D. 1902.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

6 *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1900, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } 926.

Be it remembered that heretofore to wit, on the 30th day of March, 1900, a transcript of the record from the circuit court of the United States for the southern district of Florida, was filed in the office of the clerk of said United States circuit court of appeals, for the fifth circuit, in the words and figures following, to wit:

1 United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER CO.
versus
FIDELITY AND DEPOSIT CO.

Transcript from State court.

Præcipe for Summons.

In the Circuit Court, Fourth Judicial —, in and for Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation Organized and Existing under the Laws of the State of New Jersey, Plaintiff,
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation Organized and Existing under the Laws of the State of Maryland, Defendants.

Action on attachment bond; damages, $200,000.

To P. D. Cassidey, clerk of said court:

You will please issue *summons ad res.* in the above-entitled cause, returnable according to law.

H. BISBEE,
Att'y for Plaintiff.

(Indorsed:) Filed March 25, 1898. P. D. Cassidey, cl'k, by C. W. Frazier, D. C.

2 *Summons ad Respondendum.*

The State of Florida to all and singular the sheriffs of the State of Florida:

You are hereby commanded to summons Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, if *he* be found in your county, to be and appear before the judge of our circuit court for the fourth judicial circuit of the State of Florida, at the clerk's office in Jacksonville, on the first Monday of May, next, at a court to be held on that day, in and for the county of Duval, then and there to answer L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, in an action on attachment bond, damages 200,000 dollars. And have then and there this writ.

Witness P. D. Cassidey, clerk of our said court, and the seal of the said court at the court-house in Jacksonville, county aforesaid, this 25th day of March, A. D. 1898.

[SEAL.]

P. D. CASSIDEY, *Clerk*,
By C. W. FRAZIER,
Deputy Clerk.

H. BISBEE,
Attorney for Plaintiff.

(*Sheriff's Return Endorsed on said Summons.*)

Received this summons on the 25th day of March, A. D. 1898, and executed the same on the 26th day of March, A. D. 1898, in the county of Duval, Florida, by delivering a true copy thereof to R. Bowen Daniel as the resident general agent of the within-named defendant corporation, to wit: Fidelity and Deposit Company of Maryland—at the same time showing the original and making known the contents thereof. Not being able to find the president, or vice-president, or other head of said corporation, or the cashier, or treasurer, or secretary or general manager, or any of its directors, service was made as above.

N. B. BROWARD,
Sheriff of Duval County, Florida,
By R. H. BISHOP,
Deputy Sheriff.

(Indorsed:) Filed Mar. 30, 1898. P. D. Cassidey, clerk c't ct.

3 *Præcipe for Appearance.*

Fourth Judicial Circuit of Florida, Circuit Court of Duval County.

L. BUCKI & SON LUMBER COMPANY, a Corpor'n,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corpor'n.

The clerk of the circuit court of Duval county, Florida, will please enter my appearance for the defendant in the above-stated cause.

R. H. LIGGETT,
Att'y for Def't.

(Indorsed:) Filed May 2, 1898. P. D. Cassidey, clerk c't ct.

Declaration.

In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

L. Bucki & Son Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, plaintiff, sues The Fidelity & Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, defendant, for that heretofore, to wit: on the first day of October, 1897, the Atlantic Lumber Company, a corporation organized and existing under the laws of Florida, did institute its suit in the circuit court of Florida, fourth judicial circuit, in and for Duval county, against the plaintiff herein, and then and there, by its agent, Frank H. Elmore, who was then and there a clerk in the employ of the said The Atlantic Lumber Company, make and verify under oath, an affidavit in the words and figures following, to wit:

Fourth Judicial Circuit of Florida, Circuit Court of Duval County.

THE ATLANTIC LUMBER COMPANY, a Corp'n,
vs.
L. BUCKI & SON LUMBER COMPANY, a Corp'n.

4 STATE OF FLORIDA,
Duval County.

Be it remembered that on this the 1st day of October, 1897, in the county of Duval and State of Florida, before the undersigned, personally came Frank H. Elmore, who made oath that he is the duly authorized agent of the Atlantic Lumber Company for the purpose of making this affidavit, and that the said The Atlantic Lumber

Company is a corporation existing under the laws of the State of Florida; that the L. Bucki and Son Lumber Company is a corporation existing under the laws of the State of New Jersey, and resides beyond the limits of the State of Florida; that the said L. Bucki and Son Lumber Company is indebted to the said The Atlantic Lumber Company, in the sum of $9,980.80, and that the same is actually due; and that the said L. Bucki and Son Lumber Company owns and possesses a large number of logs and a great quantity of timber and lumber situated at or near its mill site in Duval county, Florida, in the city of Jacksonville, and that the said The Atlantic Lumber Company has a statutory lien upon all of the said logs, timber and lumber, belonging to the said L. Bucki and Son Lumber Company, and has this day commenced a suit in the circuit court of the State of Florida for the fourth judicial circuit, in and for the county of Duval, for the purpose of enforcing the said lien; and that the said property will be removed beyond the jurisdiction of the circuit court for the fourth judicial circuit of Florida, in and for the said county of Duval; and that the said The Atlantic Lumber Company, has reason to believe that the said logs, timber and lumber are about to be removed from Duval county, Florida, in which they are now situated; and that the said L. Bucki and Son Lumber Company is about to remove its property out of the State of Florida.

FRANK H. ELMORE.

Sworn to and subscribed before me, this 1st day of October, 1897.

P. D. CASSIDEY,
Clerk Circuit Court,
By H. J. CASSIDEY,
Deputy Clerk.

[SEAL.]

And on the first day of October, 1897, the defendant, The Fidelity & Deposit Company of Maryland, for the purpose of securing the plaintiff against all costs and damages which said plaintiff might sustain in consequence of the improper suing out of a writ of attachment in said action against the goods and chattels, lands and tenements of the said plaintiff for the sum mentioned in said affidavit, to wit: nine thousand nine hundred and eighty dollars and eighty cents, by the said The Atlantic Lumber Company, did make and enter into its certain writing obligatory, under the corporate seal of said defendant company, which said writing obligatory was in the words and figures following, to wit:

Know all men by these presents, that Frank H. Elmore, agent for the Atlantic Lumber Company, a corporation under the laws of the State of Florida, as principal and the Fidelity and Deposit Company of Maryland, of Baltimore, a corporation organized and existing under the laws of the State of Maryland, and duly authorized under the laws of the State of Florida to do business in the State of Florida, as surety, are held and firmly bound unto the L. Bucki and Son Lumber Company, a corporation under the laws of the State of New Jersey, in the sum of twenty thousand dollars, for the payment

whereof, well and truly to be made, they do hereby bind themselves, their successors and assigns, jointly and severally.

Signed and sealed on this the 1st day of October, 1897.

The condition of the foregoing obligation is such that whereas the said The Atlantic Lumber Company has this day applied for an attachment against the goods and chattels, land and tenements of the said L. Bucki and Son Lumber Company, for the sum of nine thousand nine hundred and eighty and $\frac{80}{100}$ dollars, now if the said Frank H. Elmore, agent for the Atlantic Lumber Company shall well and truly pay all costs and damages which the said L. Bucki & Son Lumber Company may sustain in consequence of it, the said Atlantic Lumber Company, improperly suing out said attachment, then this obligation shall become null and void, otherwise it shall remain of full force and virtue.

FRANK H. ELMORE, [SEAL.]
Agent for the Atlantic Lumber Co.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By D. U. FLETCHER.

Attest: SAM'L J. SLATER,
Agent for the Company.
[CORPORATE SEAL.]

Taken and approved this 1st day of October, 1897.

P. D. CASSIDEY,
Clerk Circuit Court,
By H. J. CASSIDEY, [SEAL.]
Deputy Clerk.

And the said The Atlantic Lumber Company, then and there filed the said affidavit and the said bond or writing obligatory in the circuit court of Duval county, State of Florida; and thereupon did cause or procure a writ of attachment to be issued in behalf of
6 the said The Atlantic Lumber Company, against all of the logs, timber and lumber belonging to the L. Bucki and Son Lumber Company, situated at or near its mill site in Duval county, Florida, in the city of Jacksonville, or so much thereof as could be found, as would satisfy the sum of nine thousand nine hundred and eighty dollars and eighty cents, which said writ of attachment was in words and figures following, to wit:

The State of Florida to all and singular the sheriffs of the State of Florida:

You are hereby commanded to attach and take into custody all of the logs, timber and lumber belonging to the L. Bucki and Son Lumber Company situated at or near its mill site in Duval county, Florida, in the city of Jacksonville, or so much as can be found as will be sufficient to satisfy the debt or sum demanded, to wit: $9,980.80 with costs, in that certain suit pending in the circuit court of the fourth judicial circuit of the State of Florida, in and for Duval

county, wherein The Atlantic Lumber Company, a corporation existing under the laws of the State of Florida is plaintiff, and L. Bucki & Son Lumber Company, a corporation under the laws of the State of New Jersey, is defendant. And make return of this writ according to law.

Witness the Honorable R. M. Call, judge, as also P. D. Cassidey, clerk, and the seal of said court, at the court-house in Jacksonville, Florida, this 1st day of October, A. D. 1897.

P. D. CASSIDEY, *Clerk*,
[SEAL.] By H. J. CASSIDEY,
Deputy Clerk.

R. H. LIGGETT,
Plaintiff's Attorney.

And the said The Atlantic Lumber Company, then and there improperly and without just cause, caused the sheriff of the said county of Duval to levy the said writ upon the property of the plaintiff of the value of over fifteen thousand dollars, to wit: upon one million two hundred and fifty thousand feet of yellow-pine merchantable lumber then at plaintiff's mill site in the city of Jacksonville, Duval county, Florida, all of which was then and there the property of the plaintiff; and then and there the said The Atlantic Lumber Company caused the said sheriff to take and the said sheriff did take under and by virtue of the said writ, into his, the said sheriff's possession and custody, all of the said lumber, for a long period of time, to wit: for one month.

And the plaintiff declares upon the said bond or writing obligatory of the defendant hereinbefore set forth and shows as a
7 breach of the condition thereof, that the said writ of attachment, mentioned in said bond, and hereinbefore set forth, was improperly sued out by the said The Atlantic Lumber Company, for that the averment in the said affidavit, hereinbefore set forth, that the plaintiff, the defendant in said attachment proceedings, was indebted to the said The Atlantic Lumber Company in the sum of ninety-nine hundred and eighty dollars and eighty cents ($9,980.80) was as plaintiff avers, false and untrue, at the time when made, and the said The Atlantic Lumber Company had no meritorious cause of action therefor, against this plaintiff, the defendant in said attachment proceedings. And the plaintiff avers that the allegations in the said affidavit that the said The Atlantic Lumber Company had a lien on all of the said logs, timber and lumber belonging to the plaintiff mentioned in said attachment affidavit; and that the said property would be removed beyond the jurisdiction of the circuit court for the fourth judicial circuit of Florida in and for the said county of Duval; and that the said The Atlantic Lumber Company, had reason to believe that the said logs, timber and lumber were about to be removed from Duval county, Florida, in which they were then situated and that plaintiff was about to remove its property out of the State of Florida, were, and each and every of such allegations was false and untrue, at the time when made. And this plaintiff avers that on the first of October, A. D.

1897, it was and for many years prior thereto had been engaged at the said mills and premises in the manufacture of hard-pine lumber and timber, and that it had on the day and year aforesaid, and at all times for several years prior thereto, an officer and agent in its employ and present in the said county of Duval upon whom personal service of any process of a court of law or equity, both mesne and final, could be legally made which was well known to the Atlantic Lumber Company, on the day and year aforesaid. And the plaintiff avers that it, on, to wit: the first day of October, A. D. 1897, did not reside beyond the limits of the State of Florida within the sense and meaning of the attachment laws of the State of Florida, and that all its business as a manufacturer of lumber aforesaid was done and performed, on the day and year aforesaid, and for many years prior thereto, in the said county of Duval, which was well known to said The Atlantic Lumber Company, on the day and year aforesaid.

And the plaintiff further avers that afterwards, to wit: on the twenty-first day of October, in the year aforesaid, the said suit by the said The Atlantic Lumber Company against the plaintiff, and the said writ of attachment and all proceedings had thereon and therein, were duly removed under the laws of the United
8 States of America, to the circuit court of the United States for the southern district of Florida, and afterwards, to wit: on the 1st day of November, in the year A. D. 1897, on the motion of the plaintiff (the defendant in the said attachment proceedings) in the said last-mentioned court to dissolve the said writ of attachment, on grounds apparent on the face of the record, after argument of counsel for plaintiff and defendant, the court did render its judgment dissolving the said writ of attachment, among other reasons, on the ground that there was not due the said The Atlantic Lumber Company on the said 1st day of October, 1897, said sum of money on which it could maintain a suit on said day against the plaintiff, and ordered that all of the property so as aforesaid levied upon, under and by virtue of the writ to be delivered and returned to the plaintiff, and the said judgment dissolving the said writ of attachment remains in full force and effect, and is in no way reversed or made void.

And this plaintiff further avers that at the time the said lumber was levied upon as aforesaid, in virtue of the said writ, the plaintiff was engaged in an extensive business of manufacturing hard-pine lumber at and by the use of its mills, dry kilns and mill plant in which said business, the plaintiff manufactured and sold, hard-pine timber and lumber in an amount averaging for each working day in the year, one hundred thousand feet board measure and upwards; and that the said one million two hundred and fifty thousand feet of yellow-pine merchantable lumber, so as aforesaid levied on by virtue of said writ of attachment, was the manufactured product of plaintiff's said mills and mill plant, and was a part of plaintiff's stock in trade; and by reason of said improper issuing and levy of the said writ, the plaintiff's said business was seriously injured for a long period of time, to wit: for six months, and by the reason aforesaid, the plaintiff was interrupted, hindered and delayed and

obstructed in its said business for the period of, to wit: six months and upwards, to the great damage and injury of the plaintiff.

And the plaintiff avers that it has been put by reason of the premises, and the levying of the said writ, to great expense and trouble in and about the procuring the discharge and dissolution of the said writ of attachment, and has been compelled to pay out large sums of money for traveling expenses, of the officers and agents of plaintiff, to attend court, and in preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out other large sums of money, as costs and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorneys'
9 fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the said improper issuing of the said writ, and the levy thereof, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times Union and Citizen, and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers; and has been damaged in other large sums of money by not being able, in consequence of the said writ and levy thereof, to perform contracts and fill orders for manufacturing timber and lumber, which contracts were entered into, and which orders were accepted before the said writ was issued.

And the plaintiff claims twenty thousand dollars damages.

And for that heretofore, to wit: on the first day of October, 1897, the Atlantic Lumber Company, a corporation organized and existing under the laws of Florida, did institute its suit in the circuit court of Florida, fourth judicial circuit, in and for Duval county, against the plaintiff herein, and then and there, by its agent, Frank H. Elmore, who was then and there a clerk in the employ of the said The Atlantic Lumber Company, make and verify under oath, an affidavit in the words and figures following, to wit:

Fourth Judicial Circuit of Florida, Circuit Court of Duval County.

ATLANTIC LUMBER COMPANY, a Corporation,
vs.
L. BUCKI AND SON LUMBER COMPANY, a Corporation.

STATE OF FLORIDA,
Duval County.

Be it remembered, that on this the 1st day of October, 1897, in the county of Duval and State of Florida, before the undersigned, personally came Frank H. Elmore, who made oath before me that he is an agent of the Atlantic Lumber Company, a corporation existing under the laws of the State of Florida, and its authorized agent, for the purpose of making this affidavit; and that the L

Bucki and Son Lumber Company is a corporation under the laws of the State of New Jersey, and resides beyond the limits of the State of Florida; that the said L. Bucki and Son Lumber Company is indebted to the said The Atlantic Lumber Company in the sum of seventy-five thousand dollars, and that the same is actually due; and that the affiant has reason to believe, that the said L. Bucki and Son Lumber Company is about to remove its property out of the State of Florida; and that it is fraudulently disposing of its property; and that it will fraudulently part with its property before judgment can be obtained against it; and that it resides beyond the limits of the State of Florida.

FRANK H. ELMORE.

Sworn to and subscribed before me this 1st day of October, 1897.

P. D. CASSIDEY,
[SEAL.] *Clerk Circuit Court of Duval County, Florida,*
By H. J. CASSIDEY,
Deputy Clerk.

And on the first day of October, 1897, the defendant, The Fidelity & Deposit Company of Maryland, for the purpose of securing the plaintiff against all costs and damages which said plaintiff (defendant in said attachment proceedings) might sustain in consequence of the said The Atlantic Lumber Company's improperly suing out a writ of attachment in said action against the goods and chattels, lands and tenements of the plaintiff (defendant in said attachment proceedings) for the sum of seventy-five thousand dollars, did make and enter into its certain writing obligatory, under the corporate seal of said defendant company, which said writing obligatory was in the words and figures following, to wit:

Know all men by these presents, that Frank H. Elmore, agent for the Atlantic Lumber Company, a corporation under the laws of the State of Florida, as principal, and the Fidelity and Deposit Company of Maryland, of Baltimore, a corporation organized and existing under the laws of the State of Maryland, and duly authorized, under the laws of the State of Florida, to do business in the State of Florida, as surety, are held and firmly bound unto the L. Bucki and Son Lumber Company, a corporation under the laws of the State of New Jersey, in the sum of one hundred and fifty thousand dollars, for the payment whereof, well and truly to be made, they do bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this the 1st day of October, 1897.

The condition of the foregoing obligation is such that whereas the said The Atlantic Lumber Company has this day applied for an attachment against the goods and chattels, lands and tenements of the said L. Bucki and Son Lumber Company for the sum of seventy-five thousand dollars, now if the said Frank H. Elmore, agent for the

Atlantic Lumber Company shall well and truly pay all costs
11 and damages which the said L. Bucki and Son Lumber Company may sustain in consequence of it the said The Atlantic Lumber Company, improperly suing out said attachment, then this obligation shall become null and void, otherwise it shall remain of full force and virtue.

FRANK H. ELMORE, [SEAL.]
Agent for the Atlantic Lumber Co.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By D. U. FLETCHER. [SEAL.]

Attest: SAM'L J. SLATER, JR.,
[SEAL.] *Agent for the Company.*

Taken and approved by me this 1st day of October, 1897.

P. D. CASSIDEY,
Clerk Circuit Court,
By H. J. CASSIDEY,
Deputy Clerk.

And the said The Atlantic Lumber Company, then and there filed the said affidavit and the said bond or writing obligatory in the circuit court of Duval county, State of Florida; and thereupon did cause or procure a writ of attachment to be issued in behalf of the said The Atlantic Lumber Company, against the goods, chattels, lands and tenements of the plaintiff, in and for the sum of seventy-five thousand dollars, which said writ of attachment was in the words and figures following, to wit:

State of Florida to all and singular the sheriffs of the State of Florida:

You are hereby commanded to attach and take into custody so much of the goods and chattels, lands and tenements of L. Bucki and Son Lumber Company, a corporation existing under the laws of the State of New Jersey, as will be sufficient to satisfy the debt or sum demanded, to wit: $75,000.00 with costs, in that certain suit pending in the circuit court of the fourth judicial circuit of the State of Florida, in and for Duval county, wherein The Atlantic Lumber Company, a corporation existing under the laws of the State of Florida, is plaintiff, and L. Bucki and Son Lumber Company, a corporation under the laws of the State of New Jersey, is defendant. And make return of this writ according to law.

Witness the Honorable R. M. Call, judge, as also P. D. Cassidey, clerk, and the seal of said court at the court-house in Jacksonville, Florida, this 1st day of October, A. D. 1897.

[SEAL.]

P. D. CASSIDY, *Clerk,*
By H. J. CASSIDEY,
Deputy Clerk.

R. H. LIGGETT,
Plaintiff's Attorney.

12 And the said The Atlantic Lumber Company, then and there improperly, and without just cause, caused the sheriff of the said county of Duval, to levy the said writ upon the property of the plaintiff of the value of over three hundred thousand dollars, to wit: upon the saw-mill and saw-mill plant, three planing mills, three dry kilns, and the boilers, engines and machinery, tools and implements connected to and with the said mills and dry kilns, and upon the land of the plaintiff upon which the said properties were located, and upon a large amount and number of boilers, engines, machinery, tools and implements in and about and upon the said lands, not in use, and known as duplicate machinery, and upon four million feet of manufactured timber and lumber then in and on and about the land, and upon three million five hundred thousand feet of logs in the boom and pens of the plaintiff, near said mills, all of which was then and there the property of the plaintiff, and then and there the said The Atlantic Lumber Company improperly and without just cause, caused the said sheriff under and by virtue of the said writ, to take all of the said lands and properties into his, the said sheriff's possession and custody, and to deprive the plaintiff of the possession and use thereof, for a long period of time, to wit: for six months.

And the plaintiff declares upon the said bond and writing obligatory of the defendant, hereinbefore set forth, and shows as a breach of the condition thereof, that the said writ of attachment mentioned in said bond, and hereinbefore set forth, was improperly sued out, by the said The Atlantic Lumber Company, for that the averment in the said affidavit hereinbefore set forth, that the said plaintiff, the defendant in the said attachment proceedings, was indebted to the said The Atlantic Lumber Company in the sum of seventy-five thousand dollars was false and untrue, at the time when made, and was made without just cause. And the plaintiff avers that the allegations in the said affidavit that the affiant had reason to believe that the plaintiff was about to remove its property out of the State of Florida; and that plaintiff was fraudulently disposing of its property; and that plaintiff would fraudulently part with its property before judgment could be obtained against it, were and each and every of such allegations was false and untrue, at the time they were made, and made without just cause. And this plaintiff further avers that on the first day of October, A. D. 1897, it was, and for many years prior thereto had been, engaged at the said mills and premises in the manufacture of hard-pine lumber and timber, and that it had on the day and year aforesaid, and at all times for several years prior thereto, an officer and agent in its employ, and present in the county of Duval,

13 upon whom personal service of any process of a court of law or equity, both mesne and final, could be legally made, which was well known to the said The Atlantic Lumber Company on the day and year aforesaid. And the plaintiff avers that it, on, to wit: the first day of October, A. D. 1897, did not reside beyond the limits of the State of Florida, within the sense and meaning of the attachment laws of the State of Florida, and that all of its business as a manufacturer of lumber aforesaid was done and performed, on the

day and year aforesaid, and for many years prior thereto, in the said county of Duval, which was well known to the said The Atlantic Lumber Company on the day and year aforesaid.

And the plaintiff further avers that afterwards, to wit: on the twenty-first day of October, in the year aforesaid, the said suit by the said The Atlantic Lumber Company against the plaintiff, and the said writ of attachment and all proceedings had thereon and therein, were duly removed under the laws of the United States of America, to the circuit court of the United States for the southern district of Florida, and afterwards, to wit: on the 14th day of February, in the year A. D. 1898, on motion of the plaintiff (the defendant in the said attachment proceedings) in the said last-mentioned court, to dissolve the said writ of attachment on issues of fact as to the debt and sum demanded in the said affidavit, and as to the special causes assigned, for such writ in the said affidavit, and on diverse grounds, among which was the ground that said attachment suit was brought to recover unliquidated damages, to wit: the sum named in the contract sued on as a penalty for the breach thereof, the said court, after a protracted trial and investigation of the said issues, did, upon the testimony adduced by the said The Atlantic Lumber Company, and without any evidence being adduced by the plaintiff, at the said trial on the said motion and issues, render its judgment dissolving the said writ of attachment, and ordered all of the property so, as aforesaid, levied upon, under and by virtue of the said writ, to be delivered and returned to the plaintiff; and the said court then and there found that the plaintiff was not on the first day of October, 1897, indebted to the said The Atlantic Lumber Company in the sum of seventy-five thousand dollars, and the said judgment dissolving the said writ of attachment remains in full force and effect, and is in no way reversed, or made void.

And this plaintiff further avers that at the time the said goods, chattels, lands and tenements and mills were levied upon as aforesaid, in virtue of the said writ, the plaintiff was engaged in an extensive business of manufacturing hard-pine lumber at and by the use of the said mills, goods, chattels, lands and tenements, in
14 which said business the plaintiff manufactured and sold hard-pine lumber in an amount averaging for each working day in the year one hundred thousand feet, board measure, and upwards; and by reason of improper issuing and levy of the said writ the plaintiff's said business was destroyed and ruined for a long period of time, to wit, for six months, and thus the plaintiff's said business was wholly lost to it, and by the reason aforesaid, the plaintiff was interrupted, hindered and delayed and obstructed in its said business for the period of to wit: six months, and upwards, to the great damage and injury of the plaintiff.

And the plaintiff avers that it has been put, by reason of the premises, and the levying of the said writ, to great expense and trouble in and about procuring the discharge and dissolution of the said writ of attachment, and has been compelled to pay out large sums of money for traveling expenses, of the officers and agents of plaintiff to attend court, and in preparing for the trial of the said

motion to dissolve the said attachment; and has been compelled to pay out other large sums of money as costs and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorneys' fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the improper issuing of the said writ and the levy thereof, as aforesaid, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business aforesaid, for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times-Union and Citizen, and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers and has been damaged in other large sums of money, by not being able in consequence of the said writ and levy thereof, to perform contracts, and fill orders for the manufacture of timber and lumber, which contracts were entered into, and which orders were accepted before the said writ was issued, and has been damaged in other large sums of money by being compelled to pay the salaries of its officers and employés when idle, by reason of the said writ and levy, which said employés and officers were necessarily in the employ of plaintiff under contracts for fixed salaries by the year.

And plaintiff claims one hundred and fifty thousand dollars damages.

H. BISBEE,
Attorney for Plaintiff.

(Indorsed:) Filed May 2, 1898. P. D. Cassidey, clerk c't ct.

15 *Petition for Removal.*

In Circuit Court, Fourth Judicial Circuit, Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Def't.

Petition for removal of cause from circuit court of Duval county, Florida, to the circuit court of the United States for the southern district of Florida, fifth circuit.

Your petitioner, Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, respectfully shows to this honorable court that it is the defendant in this suit, which is of a civil nature and that the matter and amount in dispute in this case exceeds the sum or value of two thousand dollars, exclusive of interest and costs.

2nd. That the controversy herein is between citizens of different States; that the plaintiff, L. Bucki and Son Lumber Company was at the time of the commencement of this suit, and still is, a corpora-

tion organized and existing under the laws of the State of New Jersey, and consequently was and is a citizen of the State of New Jersey, having its office and the place of its meetings of its officers, your petitioner is informed and believes at —— in said State, and that your petitioner, Fidelity and Deposit Company of Maryland at the time of the commencement of this suit and still is a corporation organized and existing under the laws of the State of Maryland, and therefore is a citizen of the State of Maryland, and of no other State, having its principal place — office in the city of Baltimore in said State.

3rd. That your petitioner desires to remove this suit before the trial thereof, into the United States circuit court, fifth judicial circuit, in and for the southern district of Florida. And your petitioner further represents that this suit was commenced on the 25th day of March, A. D., 1898, at which time the præcipe for summons was filed herein, and summons was issued returnable to the first Monday, to wit: the 2nd day of May, A. D. 1898, at which time your petitioner caused its appearance to be duly entered by its attorneys herein, and your petitioner is not required by the laws of the State of Florida, or by the rules of this court to plead to the declaration of the plaintiff herein until the first Monday, to wit: the
16 6th day of June, A. D. 1898, and has made no defense and filed no plea herein.

4th. Your petitioner offers herewith good and sufficient surety for its entry in the circuit court of the United States for the southern district of Florida on or before the said rule day in June, to wit: June 6th, A. D. 1898, a copy of the record in this suit, and for paying all costs which may be awarded by the said circuit court of the United States if said court shall hold that this suit was wrongfully and improperly removed thereto. And your petitioner therefore prays that the said surety and bond may be accepted, that this suit may be removed into the said circuit court of the United States to be held in the southern district of Florida, as aforesaid, pursuant to statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this court.

And your petitioner will ever pray, etc.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
Per H. CRAWFORD BLACK,
Vice-President, Petitioner.

H. E. BULE, *Secretary.* [SEAL.]
D. U. FLETCHER AND
R. H. LIGGETT,
Attorneys for Petitioner.

STATE OF MARYLAND, }
City of Baltimore, }

H. Crawford Black makes oath that he is the vice-president of the above-named Fidelity and Deposit Company of Maryland, that the foregoing petition is true to his own knowledge, except as to matters

therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

H. CRAWFORD BLACK,
Vice-President.

Subscribed and sworn to before me this 3rd day of May, A. D. 1898.

FRED S. AXTELL,
Notary Public. [SEAL.]

(Indorsed:) Filed May 4th, 1898. R. M. Call, judge. Filed June 4, 1898. P. D. Cassidey, clerk.

Bond for Removal of Cause.

In the Circuit Court, Fourth Judicial Circuit, Duval County, Florida.

17 L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Know all men by these presents, that we, Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, as principal, and R. C. Cooley and R. Bowen Daniel of Duval county, Florida, as sureties, are holden and stand firmly bound unto the L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of the State of New Jersey, in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made unto the L. Bucki and Son Lumber Company, a corporation as aforesaid, its successors and assigns, we bind ourselves, successors, heirs, representatives and assigns jointly and firmly by *there* (these) presents, upon condition, nevertheless, that, whereas the said Fidelity and Deposit Company of Maryland has filed its petition in the circuit court of Duval county, Florida, for the removal of a certain cause therein pending wherein the said L. Bucki and Son Lumber Company is plaintiff, and the said Fidelity & Deposit Company of Maryland is defendant, to the circuit court of the United States, in and for the southern district of Florida; now if the said Fidelity & Deposit Company of Maryland shall enter in the said circuit court of the United States on or before the first Monday of June next, to wit: June 6th, 1898, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void, otherwise shall remain in full force and virtue.

In witness whereof the said Fidelity and Deposit Company, by its proper officer duly authorized and empowered thereto, and R. C.

Cooley and R. Bowen Daniel have hereunto set our hands and seals this 18th day of May, A. D. 1898.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By H. CRAWFORD BLACK, *Vice-President.*
H. E. BULE, *Sect.* [SEAL.]
R. C. COOLEY. [SEAL.]
R. BOWEN DANIEL. [SEAL.]

[CORP. SEAL.]

(Indorsed:) Filed May 4, 1898. R. M. Call, judge. Filed June 4, 1898. P. D. Cassidey, clerk.

18 *Order for Removal.*

In the Circuit Court, Fourth Judicial Circuit, Duval County, Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

The defendant herein having within the time provided by law filed its petition for the removal of this cause to the circuit court of the United States for the southern district of the State of Florida, and having at the time offered its bond with R. C. Cooley and R. Bowen Daniel good and sufficient sureties, pursuant to the statute and conditioned according to law, now, therefore, this court does hereby accept and approve the said bond and accept said petition and it is ordered that this cause be removed for trial to the circuit court of the United States for the southern district of Florida, pursuant to the statutes of the United States, as prayed in and by said petition, and that all other proceedings in this court be stayed.

R. M. CALL, *Judge.*

I, P. D. Cassidey, clerk of the circuit court of the State of Florida, fourth judicial circuit in and for the county of Duval, do hereby certify that the foregoing pages numbered from one to 31 inclusive, constitute a true copy of all the papers, proceedings and records in the case of L. Bucki and Son Lumber Company a corporation organized and existing under the laws of the State of New Jersey, plaintiff, and Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, defendant, as appears upon the files and records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 12 day of November, A. D. 1898.

[SEAL.] P. D. CASSIDEY,
Clerk of the Circuit Court of the State of Florida, Fourth Judicial Circuit in and for the County of Duval.

(Indorsement on back of transcript:) L. 35. No. 116. U. S. court so. dist. Florida. L. Bucki & Son L. Co. *vs.* Fidelity and Deposit Co. Transcript from State court. Filed Nov. 12, 1898. E. O. Locke, clerk.

19 In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff by H. Bisbee, its attorney, and amends each count in the plaintiff's declaration herein, by adding after the word "issued," in next to the last line of the first count of the declaration the following words, to wit: "and that no part of the said costs and damages have ever been paid to the plaintiff." And the plaintiff amends the second count of the said declaration by adding after the word "year," in the third line from the close of said count, the following words, to wit: "That no part of the said costs and damages have ever been paid to the plaintiff." And to the extent of the said amendments, the plaintiff confesses the demurrer filed to the said declaration.

And the plaintiff further amends the second count of the said declaration, by striking out the following words, to wit: "to wit: the sum named in the contract sued on as penalty for the breach thereof."

H. BISBEE,
Attorney for Plaintiff.

(Indorsed:) Amendment to declaration. Filed Nov. 21st, 1898. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI AND SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Now comes the defendant in the above-stated cause, by its attorneys, and, subject to its demurrer heretofore filed to the declaration herein which it insists upon as applicable to the declaration as amended, moves the court to strike from the said declaration the allegation hereinafter particular- specified, and, severally, to strike from said declaration, and from each count thereof, each of the said allegations, upon the ground that the said allegations, and each one thereof, are calculated to embarrass and prejudice a fair trial of the cause and are impertinent to the cause of action set forth in the said declaration, and in each count thereof, viz:

20 1st. All allegations appearing in each count of the declaration relating to the improper levying of the writs of attachment therein referred to.

2nd. All allegations appearing in each count of the said declaration stating that allegations appearing in the plaintiff's affidavits for attachment in the causes herein referred to were false and untrue.

3rd. All allegations to the effect that plaintiff had at all times an agent in Duval county, Florida, upon whom services or process could be made, and that plaintiff was not a non-resident of the State of Florida within the meaning of the attachment law.

4th. All allegations appearing in each count of said declaration relating to the special business in which plaintiff was engaged, and to damage sustained by it in that special business by reason of the issuance and levy of the writs of attachment.

5th. All allegations appearing in each of said counts to the effect that plaintiff was compelled to pay counsel fees, and to incur liability for counsel fees, to procure a dissolution of the attachments herein referred to.

6th. All allegations appearing in each of said counts as to injury sustained by plaintiff in its credit, and as to its inability to carry on business for want of credit, by reason of said attachments, and by reason of the publication thereof in the newspaper referred to in said counts.

7th. All allegations in relation to damages sustained by plaintiff in consequence of its liability to perform contracts with third persons, and to fill orders, for manufactured timber and lumber, in consequence of the levy of said writs of attachment.

And the defendant further moves the court to strike from the second count of the said declaration the following allegations therein contained on the same grounds, viz:

a. The allegation appearing in said count to the effect that plaintiff moved to dissolve the attachment on the ground that it was for unliquidated damages.

b. The allegation to the effect that the attachment was dissolved upon the testimony introduced by the Atlantic Lumber Company, and without any evidence being introduced by the plaintiff.

c. The allegation as to the plaintiff being engaged in business by the use of the property levied upon under the writ of attachment, and that its business was interrupted, hindered, destroyed and ruined by reason of the levy of said writ.

R. H. LIGGETT.
D. U. FLETCHER.

21 And defendant by its attorneys, moves the court to require the plaintiff to file a full, complete and itemized bill of particulars of the items and amount of damages claimed by it, by reason of the facts alleged in the declaration, upon which it seeks to recover damages, for the reason that such bill or particulars is indispensable in order to enable defendant to prepare its defense.

R. R. LIGGETT,
D. U. FLETCHER,
Attorneys for Defendant.

(Indorsed:) Motion to strike various allegations from declaration and for bill of particulars. Filed Dec. 3rd, 1898. E. O. Locke, clerk.

In the United States Circuit Court, Southern District of Florida.

THE L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Action on Attachment Bond.

This cause coming on to be heard upon the demurrer to the declaration and motion to strike certain portions of the declaration herein filed, and having been fully heard and considered it is ordered that said demurrer be overruled, and that the words "without just cause" found in the 8th line of the 10th page of the record of the circuit court of the State of Florida, and the words "among other reasons" in the second line of the 13th page in said records, and the whole of the 8th, 9th, 10th and 11th lines of the 14th page and the language beginning with "and attorneys' fees" in the 12th line of said 14th page down to the words "and has been" in the 24th line of said page of the first count of said declaration; and the words beginning with "among which" in the 20th line 22nd page down to and including the words "for the breach thereof" in the 23rd line of the 22nd page and the words beginning with "upon" in the 24th line of said 22nd page and including all of the first line of said 22nd page of the declaration; and the words beginning with "traveling" in the 6th line, 24th page down to and including the first word of the 10th line; and the words beginning with and including "and attorneys' fees" in said 10th line down to the words "has been" in the 23rd line of the 24th page, be and they are hereby ordered stricken from said declaration.

22 And it is further ordered that the plaintiff file herein a bill or particulars showing the contracts made as alleged before said attachment, and the salaries paid to employés as alleged.

Done and ordered this 11th day of February, 1899.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Order upon demurrer and motion to strike certain portions of the declaration. Filed Feb. 11th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.
} Bill of Particulars.

The names and annual salaries of officers and employés of the plaintiff on the first day of October, 1897, are as follows:

Chas. L. Bucki, president	$5,000
J. D. Heagy, mill superintendent	2,500
W. C. Cox, stenographer	720
J. B. Rosser, auditor and book-keeper	1,500
Frank Holsche, office boy	360
George A. Benjamin, planing-mill superintendent	1,200
George Martin, engineer	1,080
Four watchmen	1,800
H. Rotschild, book-keeper	1,200
Kurt, office boy, New York	360
L. J. Brush, logging supt. and inspector	900
H. Barker, chief shipping clerk	1,200
C. W. Simmons, secretary and treasurer	3,600
H. W. Simmons, salesman	1,200
Isadore Cohen, salesman	1,800
J. B. Murphree, salesman	1,800

The loss in consequence of the attachment by not being able to fill orders and contracts for lumber existing and pending October 1st, 1897, are as follows:

Contracts with Degnan McLean & Company, of New York city for fine quality of timber and lumber, loss as follows, to wit:

Loss of profits at about $4 per thousand on 483,000 feet, by not being able to deliver the same.

23 Also, loss of about $6,000, that sum being charged to L. Bucki & Son Lumber Company by said Degnan McLean & Company as the difference which that company had to pay for timber and lumber bought at retail in New York city to make up deficiences in deliveries, and the prices which L. Bucki & Son Lumber Company were to receive for same.

Contract with the Yellow Pine Lumber Company of New York City.

Loss of profits by not delivering 800,000 feet, about $4 per thousand. Also loss of about $10,000 charged L. Bucki & Son Lumber Company, or rather retained by said Yellow Pine Company, as the difference between the contract price of such timber and lumber, and the price which said Yellow Pine Company had to pay at retail in New York, to make up deficiencies in deliveries under the contract.

Contract with Sheppard & Morse Lumber Company of Boston, Mass.

Loss of profits by not delivering about 100,000 feet about $4 per thousand. Also loss of about $600, the difference which said Sheppard & Morse Lumber Company had to pay between the contract price and the market price of lumber to make up deficiencies in deliveries.

Contract with E. B. Hunting & Co., of Baltimore, Md.

Loss by not delivering 280,000 feet, to wit: Loss of difference between the contract price and the price said company had to pay in the market to make up deficiencies in deliveries, $1100.

And the defendant is hereby notified that at the trial of the cause the plaintiff will adduce, or offer to adduce, testimony establishing damages by way of demurrage on the schooner R. F. Hartley, $100, caused by the writ of attachment. Also expenses and disbursements made and incurred in preparing for the trial of the motions to dissolve the attachments, to wit: for monies paid and incurred in employing agents to ascertain whether or not it was practicable or possible for the Atlantic Lumber Company to obtain pine timber and pine logs sufficient in quantity, and sufficiently near to Jacksonville to enable the said The Atlantic Lumber Company to continue in the performances of their contract for the remaining period of three and one-half years, and to deliver logs of the description called for by the contract into the boom of the L. Bucki & Son Lumber Company at the price of $7.25 or $7.75 per thousand feet, board measure, called for by the contract, and make any profit thereon, such testimony being essential to rebut and overcome evidence adduced by the Atlantic Lumber Company to establish that it was able to con-
24 tinue in the performances of the contract, the amount so expended by L. Bucki & Son Lumber Company, being about $500.

We also give notice that we shall adduce testimony to establish the necessary expenditure of about $150 in correspondence by telegraph and by letter, which correspondence was necessary to prepare to try the motions to dissolve the attachment.

We shall also adduce testimony to prove damages by way of costs in obtaining forthcoming bonds, premium paid on the forthcoming bonds to the Fidelity & Deposit Company of Maryland, $1,000.

Also premium on insurance policies on mill plant, etc., during the time it was in possession of the sheriff, at the rate of $2,400 per year; taxes during like period, at the rate of about $800 per year; rent paid Joseph D. Mitchell and estate, at the rate of $400 per year, for the use of boom pen facilities; day and night watchman at the mill at $5 per day.

We shall also offer evidence of damages sustained by attorneys' fees paid and obligation to pay attorneys' fees in obtaining a dissolution of the attachments, and also damages to the credit of the plaintiff by reason of the attachments, and by reason of the fact that the issuing and levy of the attachments was published and given wide circulation in the newspaper mentioned in the declaration and other evidence to prove all items of damages stricken from the declaration by the order of the court.

H. BISBEE,
Attorney for Plaintiff.

Service of a copy of the foregoing notice and bill of particulars excepted (accepted) this 15th day of February, 1899.

R. H. LIGGETT,
Defendant's Att'y.

(Indorsed :) Bill of particulars and notice of offer of proof. Filed Feb. 16th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Now comes the plaintiff by H. Bisbee, its attorney, and without waiving any objection or exception to the order of the court on motion to strike out certain parts of the declaration in the above-entitled cause, that the words and matters stricken out in pursuance of the said order are as follows, to wit: the words "and without just cause" found in the 8th line of the 10th page of the record of the circuit court of the State of Florida, the same being in the second line of the fourth paragraph of the first count of said declaration. And the words "among other reasons" in the second line of the 13th page in said record, the same being in the fourteenth line of the sixth paragraph of said count. And the words "traveling expenses of the officers and agents of plaintiff, to attend court and preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out large sums of money as" and the words "and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorneys' fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and by reason of the said improper issuing of the said writ, and the levy thereof, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times-Union and Citizen and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers," on the fourteenth page of the said record, and in the eighth paragraph of the first count herein.

And further, the words, "among which was the ground that said attachment suit was brought to recover unliquidated damages, to wit: the sum named in the contract sued on as a penalty for the breach thereof;" and the words "upon the testimony adduced by the said The Atlantic Lumber Company, and without any evidence being adduced by the plaintiff, at the said trial on the said motion and issues;" on the twenty-second and twenty-third pages of the said record, and in the sixth paragraph of the second count of said declaration. And the words "traveling expenses of the officers and agents of plaintiff, to attend court, and in preparing for the trial of the said motion to dissolve the said attachment; and has been compelled to pay out other large sums of money as" and the words "and attorneys' fees; and has been compelled to incur and has incurred valid obligations to pay other large sums of money, as attorneys' fees, the employment of attorneys being indispensably necessary to procure and obtain the dissolution of the said writ of attachment; and

by reason of the improper issuing of the said writ and the
26 levy thereof, as aforesaid, plaintiff was greatly injured in its credit, and for a long time was and is unable to carry on its business aforesaid, for want of credit, the said attachment proceedings having been published in daily newspapers of large circulation, to wit: in the Times-Union and Citizen and in the Metropolis, both being newspapers published in the said county of Duval, and in other papers;" on the twenty-third and twenty-fourth pages of said record, and in the eighth paragraph of the said second count.

H. BISBEE,
Attorney for Plaintiff.

Received a copy of the foregoing amendment Feb. 15, '99.

R. H. LIGGETT,
Def't's Attorney.

(Indorsed:) Amendment of declaration. Filed Feb. 16th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff, by H. Bisbee, its attorney, and moves to set aside the order heretofore made in this action, striking out from the declaration certain items of damages on the ground that the court erred in granting said order, and the items of damages stricken out are proper for the jury to consider.

H. BISBEE,
Att'y for Plaintiff.

Please take notice, that on Wednesday, the eighth day of March, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard, we shall call up the foregoing motion for disposition.

H. BISBEE,
Att'y for Plaintiff.

To Richard H. Liggett, Esq., attorney for defendant.

Service of the foregoing notice accepted this 27th day of February, 1899.

R. H. LIGGETT,
Att'y for Defendant.

(Indorsed:) Motion to set aside order, striking allegation from declaration. Filed Mar. 8th, 1899. E. O. Locke, clerk.

27 In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Please take notice that in the bill of particulars heretofore filed in this cause, in the statement of losses in consequence of the attachment by not being able to fill orders and contracts existing and pending October 1st, 1897, the Degnan-McLean Construction Company was inadvertantly and erroneously styled Degnan McLean & Co., and on the twenty-first day of March, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard, I shall apply to the court for leave to amend said bill of particulars by striking therefrom the words "Degnan-McLean & Company," wherever they occur, and inserting in place thereof the words "Degnan McLean Construction Company."

H. BISBEE,
Attorney for Plaintiff.

I hereby acknowledge service of the foregoing notice and consent that the amendment therein indicated may be made.

R. H. LIGGETT,
Counsel for Defendant.

(Indorsed:) Amendment to bill of particulars. Leave to file granted. James W. Locke, judge. Filed Mar. 23rd, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Now comes the defendant in the above-stated cause, The Fidelity and Deposit Company of Maryland, by D. U. Fletcher and R. H. Liggett, its attorneys and for a plea to the first count of the declaration of plaintiff herein says:

That as to so much of the said first count of said declaration as alleges that the attachment therein mentioned sued out by the Atlantic Lumber Company against the L. Bucki & Son Lumber Company was dissolved on the ground that there was not due on the

28 first day of October, 1897, from the L. Bucki & Son Lumber Company to the said The Atlantic Lumber Company a sum of money for which it could maintain the said attachment, it does not appear in and by the record in said cause that the said attachment was dissolved on the said ground stated in plaintiff's declaration, but it appears in and by the said record in said cause

that the said attachment was dissolved upon a preliminary motion for defects appearing upon the face of the proceedings, and without any hearing or determination of the merits; and the defendant as to the remainder of said first count of plaintiff's declaration alleges that the Atlantic Lumber Company on October 1st, 1897, at the time that the attachment in said count mentioned was sued out, did have a meritorious cause of action against the L. Bucki & Son Lumber Company for a sum of money authorizing the attachment to be sued out on said day, and the allegations stated in the affidavit for attachment filed in said cause as to the grounds existing for attachment were true, and the said attachment was not improperly sued out.

R. H. LIGGETT,
D. U. FLETCHER,
Attorneys for Defendant.

STATE OF FLORIDA, }
Duval County. }

Before me, the undersigned, a notary public in and for the State of Florida at large, personally came, within the county of Duval and State of Florida, —— —— who, being by me duly sworn, says that he is the agent of the Fidelity and Deposit Company of Maryland, and makes this affidavit in its behalf, that he has read the foregoing plea, and that the allegations therein contained are true, as he is informed and believes.

R. BOWEN DANIEL.

Sworn to and subscribed before me this 15th day of April, 1899.

JNO. W. DODGE,
[SEAL.] *Notary Public, State at Large.*

(Indorsed:) Amended plea to 1st count of declaration. Filed April 15th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff, }
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant. }

Now comes the defendant in the above-stated cause, The
29 Fidelity and Deposit Company of Maryland, a corporation, by R. H. Liggett and D. U. Fletcher, its attorneys, and for a plea to the declaration of the plaintiff filed herein, and to each count thereof, says that the plaintiff was not damaged as in the said declaration alleged.

R. H. LIGGETT,
D. U. FLETCHER,
Attorneys for Defendant.

STATE OF FLORIDA, }
Duval County. }

Before me, the undersigned, a notary public in and for the State of Florida at large, personally came, within the county of Duval and State of Florida, R. Bowen Daniel who being by me duly sworn says that he is the agent of the Fidelity and Deposit Company of Maryland and makes this affidavit in its behalf, and that the foregoing plea is true as he is informed and believes.

R. BOWEN DANIEL.

Sworn to and subscribed before me this 22nd day of April, 1899.

ERNEST C. BIXLER,
[SEAL.] *Notary Public, State at Large.*

(Indorsed:) Plea of *non damnificatus*. Filed Apr. 24th, 1899. E. O. Locke, clerk, by Louis Starke, deputy.

United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY }
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND. }

This cause coming on to be heard upon the plaintiff's demurrer to the defendant's amended plea, filed April 15th, 1899, to the first count of the declaration, and having been fully heard, it is ordered that said demurrer be sustained.

Done and ordered in open court this 28th day of April.

JAMES W. LOCKE, *Judge.*

(Indorsed:) Order sustaining demurrer to defendant's amended plea to declaration. Filed Apr. 28th, 1899. E. O. Locke, clerk, by Louis Starke, deputy.

30 In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff, }
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant. }

Comes now the plaintiff by H. Bisbee, its attorney, and takes issue upon the plea of defendant filed on the 24th day of April, 1899.

H. BISBEE,
Attorney for Plaintiff.

(Indorsed:) Joinder of issue upon plea of *non damnificatus*. Filed Apr. 28th, 1899. E. O. Locke, clerk.

In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

Comes now the plaintiff, by H. Bisbee, its attorney, and by way of amendment to its bill of particulars hereinbefore filed, says that its loss upon the contract with E. B. Hunting & Co. of Baltimore, Md., mentioned in said bill of particulars, by not delivering 280,000 feet of lumber, is confined to the loss of profits plaintiff would have made by the performances of said contract by delivering said lumber, amounting to the sum of, to wit: $1,100.

H. BISBEE,
Attorney for Plaintiff.

Received a copy of the foregoing amendment, May 3rd, 1899.
R. H. LIGGETT,
Attorney for Defendant.

(Indorsed:) Amendment to bill of particulars. Filed May 3rd, 1899. E. O. Locke, clerk.

31 In the Circuit Court of the United States, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

The defendant will please take notice that at the trial of this action, we shall offer in evidence, and insist upon proving the following items of damages:

First. All monies necessarily paid out for counsel and attorneys' fees, for services in preparing motions to dissolve the attachments, and in preparing for the trial of the said motions, and in the trial of the said motions, which services were caused by and were in consequence of said writs of attachment. Also reasonable compensation for the services of attorneys-at-law employed as above, which have not been paid, which services were caused by and in consequence of said writs of attachment. And we shall offer evidence to prove the value of the services of the said attorneys-at-law in the circuit court of the United States for the southern district of Florida, in the United States circuit court of appeals for the fifth circuit, and in the Supreme Court of the United States, in resistingthe attempts and efforts of the Atlantic Lumber Company and the said defendant to arrest and vacate the judgments of the said circuit court dissolving said attachments. The period of the time covered by such services was from the fourth day of October, 1897, to the 8th day of June, 1899.

Second. Plaintiff at the trial of said action will offer evidence to

prove, and insist upon proving, that the said writs of attachment were levied upon substantially all the property and assets of the plaintiff, to wit: its mill properties, manufactured timber and lumber, and logs in its boom in Jacksonville, Florida; and that in consequence of the levies of the said writs upon the said properties, the plaintiff's ways and means of continuing in business were taken away from the possession and control of the plaintiff, and the plaintiff was thereby deprived and prevented from carrying on its business of manufacturing and selling hard-pine lumber from the first day of October, 1897, to the 8th day of June, 1899. And we shall offer evidence to prove, and insist upon proving, that in consequence of the levies of said writs of attachment upon all the said properties, it was impossible or impracticable for the plaintiff to obtain the necessary money or credit upon which to do any business for the entire period above mentioned; and to that extent the plaintiff will
32 offer evidence to prove and insist upon proving the injury and damage to its credit as the direct consequence of the levy of the said writs upon the properties aforesaid.

Third. The plaintiff will offer evidence to prove and insist upon proving at the trial of said action, all payments of money actually made, or obligations actually incurred in necessary prevailing (prevailing) expenses of the plaintiff's officers and agents in preparing for the dissolution of the said attachments, and in obtaining a dissolution of the same, and that such expenses and obligations were necessarily incurred as the direct consequence of the levy of the said writs of attachment; and all moneys paid out and obligations incurred in traveling expenses of the attorneys of the plaintiff, and in printing of briefs, and motions, and other papers in accordance with the rules of court, necessary to properly resist the attempts and efforts of the defendant and the Atlantic Lumber Company to reverse the said judgments dissolving the said writs of attachment in the United States circuit court of appeals for the fifth circuit, and the Supreme Court of the United States; and for services of attorneys-at-law rendered in resisting the efforts of the said defendant and the said The Atlantic Lumber Company to have the circuit court of Duval county proceed with the trial of the suits of the Atlantic Lumber Company against the plaintiff in the summer of 1899, and to resist attempts of the defendant and the said The Atlantic Lumber Company to obtain a writ of mandamus from the supreme court of Florida to compel the said circuit court of Duval county to proceed with the trial of the said action, in the summer of 1899, and after the circuit court of appeals aforesaid had affirmed the judgment, and denied the motions of the Atlantic Lumber Company to remand the case for want of jurisdiction, and after the Supreme Court of the United States had denied the application of the said The Atlantic Lumber Company to review the said judgments dissolving the said attachments on writ of certiorari to the said circuit court of appeals.

And you will further take notice that at the hearing of the motion to restore to the declaration certain matters heretofore stricken out, plaintiff will ask the court to order that the said items of damages may be taken and considered as a part of the declaration and each

count thereof; and at the same (time) we shall ask for leave to strike from the declaration any definite limit of time during which damage resulted to the plaintiff in consequence of said attachments.

H. BISBEE,
Attorney for Plaintiff.

Service of the foregoing notice accepted this 9th day of January, 1900.

R. H. LIGGETT,
Attorney for Defendant.

33 (Indorsed:) Notice of offer of proof of damages. Filed Jan. 17th, 1900. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

THE L. BUCKI & SON LUMBER CO.
vs.
THE FIDELITY & DEPOSIT CO. OF MARYLAND.

On Declaration.

This cause coming on to be heard upon the motion to restore to the declaration all clauses and paragraphs heretofore stricken out, and having been fully heard and argued by counsel and having been duly considered, it is ordered that such matters be so far restored as to permit testimony to be introduced upon the questions of damages resulting from counsel fees and loss of credit, subject to any subsequent ruling and charge of the court to the jury.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., Jan'y 19th, 1900.

(Indorsed:) Order on motion to restore to the declaration certain clauses and paragraphs. Filed Jan. 25th, 1900. E. O. Locke, clerk, by Louis Starke, deputy.

United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER CO.
vs.
THE FIDELITY & DEPOSIT CO. OF MARYLAND.

We, the jury, find for the plaintiff and assess its actual damages, exclusive of attorneys' fees, at $10,880.00.

And if the court should be of the opinion that, as a matter of law, the plaintiff may recover for such attorneys' fees, we further find for the plaintiff for the amount of $7500.00, as a reasonable and just fee for the services proven.

WM. MICKLER, *Foreman.*

(Indorsed:) "Verdict. Filed Feb. 2nd, 1900." E. O. Locke, clerk.

34 *Defendant's Assignments of Error.*

In the United States Circuit Court for the Southern District of Florida.

THE L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

The Fidelity and Deposit Company of Maryland, by its attorney, assigns the following errors to the rulings and decisions of the circuit court herein.

First. The court erred in refusing to strike out on defendant'- motion all allegations appearing in each count of the declaration, relative to the business in which plaintiff was engaged, and to damages sustained by it in that business, by reason of the issuance and levy of the writs of attachment.

Second. The court erred in refusing to strike out on defendant's motion all allegations in each count of the declaration, in relation to damages sustained by the plaintiff in consequence of its inability to perform contracts with third persons and to fill orders for manufactured timber, and lumber, in consequence of the levy of writs of attachment.

Third. The court erred in refusing to strike out on defendant's motion the allegations contained in the second count of the declaration as to the plaintiff being engaged in business by the use of the property levied upon under the writ of attachment, and that its business was interrupted, hindered and destroyed and ruined by reason of the levy of said writ.

Fourth. That the court erred in refusing to strike out on defendant's motion, all allegations appearing in each count of the declaration, stating that the allegations appearing in plaintiff's affidavits as to the special grounds for attachment in the cause therein referred to, were false and untrue.

Fifth. That the court erred in sustaining the demurrer to the defendant's plea to the first count of the declaration, filed herein, on April 15th, 1899, wherein the defendant alleged that it did have a meritorious cause of action against the plaintiff for the amount of nine thousand nine hundred and eighty and 80 / 100 ($9,980.80) dollars, and that the allegations for attachment made in the cause in said count mentioned, were true and the said attachment was not improperly sued out, and that it did not appear from the record that the attachment was dissolved on the ground specified in the declaration and that the said attachment was dissolved on a preliminary motion and without a hearing on the merits.

35 Sixth. That the court erred in refusing to permit the defendant on April 24th, 1899, to file a plea traversing certain special allegations of the declaration, which are fully stated in the plea which is contained in the bill of exceptions herein.

Seventh. That the court erred in admitting evidence tending to

show that on October 1st, 1897, the plaintiff was negotiating a contract for the loan of money and sale of lumber with Sheppard-Morse Lumber Company, and in admitting testimony tending to show that the consummation of such contract was prevented by the attachment.

Eighth. That the court erred in permitting the plaintiff to prove that on October 1st, 1897, it had a certain contract with the Yellow Pine Lumber Company for the sale and delivery to it of all the timber and one-quarter of the boards manufactured by the plaintiff during the year 1897.

Ninth. The court erred in admitting evidence to the effect that the plaintiff gave a forthcoming bond for the property attached, and paid the surety company $750.00 for becoming surety thereon.

Tenth. The court erred in permitting the witness Charles L. Bucki to testify over the objection of the defendant, that the profits derived from the operation of the mill were $8,722.40 in March, 1897; $9,966.00 in April; $8,154.48 in May; $3,269.81 in June; $5,607.48 in July; $1,932.12 in August and $422.00 in September, 1897.

Eleventh. The court erred in admitting evidence of the execution of a mortgage by the plaintiff to the Fidelity and Deposit Company of Maryland, whereby plaintiff mortgaged its mill plant to said Fidelity and Deposit Company, to secure it against loss as a surety on the forthcoming bond of the plaintiff, and in admitting evidence to the effect that such mortgage was not satisfied till June 6th, 1899.

Twelfth. That the court erred in permitting the plaintiff to prove the amount of lumber manufactured by plaintiff at its mill between October 1st, 1896, and October 1st, 1897.

Thirteenth. That the court erred in permitting the plaintiff to prove that on October 1st, 1897, it had a number of officers in its employ, who were employed by the year at salaries which aggregated fifteen thousand dollars ($15,000.00) and that the year of each of said employés expired in April, 1898.

Fourteenth. That the court erred in permitting the plaintiff to prove that it had in its employ four watchmen to each of whom it paid one dollar per day, and that these watchmen watched the mill property during the whole time that the lien of the attachment remained on the property.

36 Fifteenth. The court erred in sustaining the plaintiff's objection to the following question propounded by the defendant to Charles L. Bucki, president of the plaintiff company.

"Q. What application was made of the proceeds of this lumber, that was sold from the mill, after October 1st, 1897?"

The purpose of the question being to show that the plaintiff made use of the money immediately on its receipt and that they were not embarrassed in its use by reason of the forthcoming bond.

Sixteenth. That the court erred in refusing to exclude from the consideration of the jury, all testimony in regard to plaintiff's having certain employés in its employ, on annual salaries, on October 1st, 1897.

Seventeenth. That the court erred in giving the following instruction to the jury:

"One of the principal points in this action is as follows: The plaintiff claims that it should be compensated for the loss of the use of its mill properties, caused by these attachments. The defendant claims that the plaintiff is not entitled to be compensated for the loss of the use of its mill property in consequence of the attachment, because, as the defendant asserts, the plaintiff was in such financial condition that it could not have continued in business even if attachments had not been issued and levied. This is a question of fact for you to determine upon all the evidence in the case, and if you believe from all the evidence in the case that if these attachments had not been issued and levied upon the plaintiff's properties, it, the plaintiff, would have been able to have continued in business, then you will find against the defendant on this contention, and award to the plaintiff such an amount of damages as upon the evidence you feel convinced the plaintiff sustained as a direct and proximate consequence of these attachments."

Eighteenth. That the court erred in giving the following instruction to the jury:

"Another element of damages claimed by the plaintiff is that the attachment interrupted its business and by such interruptions and the consequences thereof, resulting from the attachments, the plaintiff was prevented from sawing and shipping lumber to certain parties in Baltimore, New York and Boston, which plaintiff agreed to furnish prior to October 1st, 1897; that such losses consist of certain amounts the purchasers of the lumber had to pay to supply what they had purchased of plaintiff, in excess of the price they had agreed to pay the plaintiff. The court instructs you that the defendant is liable for all such losses if any resulted as a direct consequence of the attachments."

37 Nineteenth. That the court erred in giving the following instruction to the jury:

"The jury are the exclusive judges as to the effect of the writs of attachment upon the business of the plaintiff, that is to say, when you consider any item of damages in this case, you are the sole judges as to whether the writs of attachment and the levy of the same, directly and approximately caused the damage or injury, or whether there was some other intervening cause of the damage or injury, independent of the attachment, that would have caused the damage if the attachment had not been issued."

Nineteenth and one-half exception. That the court erred in withdrawing from the consideration of the jury the testimony to the effect that the market price of lumber was better after October 1st, 1897, than prior thereto.

Twentieth. That the court erred in giving the following instruction to the jury:

"It is the province and right of the jury to decide from the evidence whether or not these writs of attachment defeated and prevented the carrying out and performance of any contract with Sheppard-Morse & Company, for the loan of money or for the de-

livery of lumber, and damages sustained by the plaintiff by such non-delivery, and it is your right and duty to decide upon the evidence whether or not these writs of attachment prevented the plaintiff from delivering any lumber to the Degnen-McLean Company or E. B. Hunting & Company, which plaintiff prior to October 1st, 1897, had contracted to deliver, and if you find such prevention of deliveries toward such damages as the evidence justified.

Twenty-first. That the court erred in giving the second paragraph of the following charge, given to the jury by the court:

"You *the* the exclusive judges as to the facts of this cause, you are the exclusive judges of the amount of damages the plaintiff sustained as the direct and proximate consequence of the issuing and levying of these writs of attachment.

These damages consist of two general consequences:

1st. All moneys paid out and all expenses incurred in and about and attending to the preparation of the trial of the motions to dissolve the attachments and on the trial of such motions which become reasonably necessary as a direct consequence of such attachment.

2nd. All consequential damages, that is all damages caused by the interruption of the plaintiff's business, either by disabling
38 the plaintiff from operating its mill or disabling it to deliver timber and lumber it had agreed to deliver prior to October 1st, 1897, if you believe from the evidence that the direct and proximate effect of such attachments caused such interruption of the plaintiff's business."

Twenty-second. That the court erred in refusing to give the following instruction to the jury at the request of the defendant:

"The court instructs the jury that they shall allow the plaintiff no damages on account of the plaintiff's inability to fill orders for lumber after October 1st, 1897, if such inability was due to the fact that the plaintiff was unable to buy the logs from which to cut said lumber."

Twenty-third. That the court erred in refusing to give the following instruction to the jury at the request of the defendant:

"The court instructs you that the plaintiff has produced no evidence to show any injury done to the lumber and logs seized by the sheriff under the writs of attachment, or that it was sold for any less by reason of the attachments, than it might have been sold for, and you are, therefore, instructed that you shall allow the plaintiff no damages on account of the seizure of the logs, lumber and other personal property."

Twenty-fourth. That the court erred in giving the following instruction to the jury:

"Another point is the damage claimed for the salaries of the officers and employés of the Bucki Lumber Company for the time of the enforced idleness, that is the time they continued on salaries and on account of the granting of the writs of attachment, they were suspended from active operations. You have heard the testimony upon that; and you will determine just how far the Bucki Company suffered in damages on account of the time that their em-

ployés were compelled to remain idle and earned nothing, although they were obtaining wages."

Twenty-fifth. That the court erred in refusing to give the following instruction to the jury at the request of the defendant:

"The jury are instructed that the injury in regard to the loss of time by the employés shall be limited to the period between October 1st, 1897, and October 11th, 1897, and that no damages can be allowed for any time lost by plaintiff's employés after October 11th, 1897."

Twenty-sixth. That the court erred in refusing to give the jury the following instruction at the request of the defendant:

"The court instructs the jury that they cannot find any damages for the plaintiff on account of the loss of the time of its em-
39 ployés unless they find from the evidence that the time of some of the employés was actually lost on account of the levy of the writ of attachment, and if the jury should find from the evidence that any time found to have been lost by the employés would have been lost even though no attachment had been levied, then they shall find no damages for the plaintiff on account of such lost time."

Twenty-seventh. That the court erred in refusing to give the following charge to the jury at the request of the defendant:

"If the jury finds from the evidence that the period of seven working days would have been lost in November if it had not been lost in October, and that the mill ran seven days longer in November than it would have done had the shut-down in October not occurred, then you shall find no damages for the plaintiff on account of such shut-down."

Twenty-eight. That the court erred in refusing to give the following instruction to the jury at the request of the defendant:

"If the jury find from the evidence that the plaintiff manufactured as much lumber after October 1st, 1897, as it would have done had no shut-down occurred in October, then they shall find no damages for the plaintiff, on account of such shut-down."

Twenty-ninth. That the court erred in giving the following instruction to the jury:

"The evidence in this case shows that after ten days there was a forthcoming bond given to the sheriff and the plaintiff in this case assumed all the risk and responsibility of taking possession of that property. The first bond permitting them to go to work was given on the 11th of October, and there was a million and a half feet of lumber released from this attachment. On the 4th of November, there was a forthcoming bond, releasing all the rest of the mill and the property.

"Now, as I say the plaintiff contends, that as this case continued, this question of attachment continued: that it was suffering under the attachment, the lien of the attachment until the sixth day of June, 1899, when finally the action of the Supreme Court of the United States became conclusive and these attachments were finally determined beyond further question. That is the contention of the plaintiff; they claim damages by the interference of these writs of

attachment, for this entire time from the first of October, 1897, up to the 6th of June, 1899.

"The defendant contends that plaintiff having taken possession of the property, used it, sawed it up, used their mill, leased
40 their mill, and used their lumber, sawed their lumber, filled their contracts as far as they saw fit, and that the contention of the plaintiff is not sound or is not just under the law; I instruct you in regard to that point that although the plaintiff in this case took possession of that property, there was hanging upon that possession, the risk which it assumed that it might be compelled to return the property, because it could be compelled to do so; it had the right when it took possession, but in doing so, it became liable for any amount which might be pronounced in those attachment suits and the sheriff could look to it. The important question is this: How much damage did the plaintiff suffer by having that attachment bond and the levy of that attachment hanging over it, although it was using and disposing of its property. That is the most difficult question for you to determine. If you can determine from the testimony of the value of the property as has been stated and all the facts and circumstances that are in the testimony, it will be for you to say and determine such damages.

"Notwithstanding the possession and use of the property, the plaintiff has asked that interest upon the value of the lumber be allowed them, the value of the lumber for the entire time be allowed them as if they had not taken possession of it, had not used it. I instruct that the plaintiff was not bound to give a forthcoming bond and take possession of the property, but it did it voluntarily and the question is what has been the damage with the hanging lien and the risk it assumed for that time?"

Thirtieth. The court erred in giving the following charge to the jury:

"Property, the possession of which is held by virtue of a bond given in the course of a judicial proceeding and process issued thereon, is held upon the process of the law. No change in the title is effected. If the person so holding parts with its possession, he does it at his peril."

Thirty-first. The court erred in giving the following charge to the jury:

It was not the duty of the plaintiff to give forthcoming bonds or indemnity bonds to the sheriff or the plaintiff in the attachment suit.

Thirty-second. The court erred in giving the following instruction to the jury:

The giving of the forthcoming bonds did not discharge the lien of the attachments upon the property attached and the plaintiff after obtaining the possession of the logs and lumber and timber, levied on, could not sell and dispose of the same and give a
41 good title to the purchaser free and clear of the attachment liens without assuming any risk of the property being demanded or damages being entailed.

Thirty-third. The court erred in giving the following instruction to the jury:

After giving the forthcoming bonds for the personal property, to wit: logs and lumber levied upon, the plaintiff held such property as bailee for the sheriff and was bound to deliver such property back into the sheriff's possession whenever such sheriff demanded the possession of such property for the purpose of enabling the sheriff to sell the same to satisfy any judgment the court might render in the attachment suits.

Thirty-fourth. That the court erred in giving the following instruction to the jury:

"If the plaintiff sold such personal property after giving such forthcoming bonds, in comtemplation of law, the plaintiff held the proceeds of such sales in its hands, and has the legal right to hold such proceeds in its hands to pay any judgment that might thereafter be recovered against it in the suits in which the attachments were issued, until such lien of the attachments ceased to exist."

Thirty-fifth. That the court erred in giving the following charge to the jury:

"The court instructs you to award damages to the plaintiff which it sustained by reason of or in consequence of the levy of the attachments upon all the timber and lumber and logs attached, and to award such damages for the entire period of time the lien of the said attachments remained and continued upon the said timber, lumber and logs, considering any deduction from such damages from the fact that the forthcoming bonds or indemnity bonds were given by the plaintiff."

Thirty-sixth. That the court erred in giving the following instruction to the jury:

"It is your province and duty to determine under the evidence the length of time this attachment lien remained upon and continued operative upon the property attached."

Thirty-seventh. The court erred in giving the following instruction to the jury:

"If you are satisfied in your minds what the testimony will justify, it is not absolutely necessary for you to find a positive amount of damages, if you are satisfied that such damages and such amounts have been fully proven. It is not necessary that an actual positive amount be determined by you to a mathematical certainty or nicety."

Thirty-eighth. That the court erred in giving the following instruction to the jury:

"You will allow the plaintiff interest at eight per centum per annum upon every item of damage which you find the plain-
42 tiff sustained from the time you find such damage- were sustained to the date of your verdict."

Thirty-ninth. The court erred in giving the following instruction to the jury:

The subject of indebtedness of plaintiff incurred after October 1st, 1897, and the subject of giving a mortgage upon its properties in

February, 1898, is wholly immaterial in this case and you will exclude the same from your consideration.

And the Fidelity and Deposit Company of Maryland prays that the judgment herein rendered against it may be reversed, and a new trial directed.

R. H. LIGGETT,
Attorney for Fidelity & Deposit Company of Maryland.

(Indorsed:) No. 116. In the United States circuit court for the southern district of Florida. L. Bucki & Son Lumber Company, *vs.* Fidelity & Deposit Company of Maryland. Assignment of error. Filed Mar. 17, 1900. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Be it remembered that on the fifth day of March, A. D. 1898, the L. Bucki & Son Lumber Company instituted a suit at law against the Fidelity & Deposit Company of Maryland, in the United States circuit court for the southern district of Florida, and afterwards on the third day of December, A. D. 1898, at a term of said court held at Jacksonville, in said district, the defendant, by its attorney, submitted a motion in said cause to the said court, to strike out of each count of the declaration all allegations appearing therein, relative to the business in which the plaintiff was engaged, and the damages sustained by it in that business by reason of the issuance and levy of the writs of attachment, but the court did refuse to grant the said motion, to which the defendant did then and there except, and this constitutes the defendant's first exception.

Second exception. And on the same day the defendant, by its attorney, moved the said court to strike out of each count of the declaration herein, all allegations relative to damages sustained by the plaintiff in consequence of its inability to perform contracts with third persons and to fill orders for manufactured timber and
43 lumber in consequence of the levy of the writ of attachment, but the said judge denied the said motion, to which action the defendant did then and there except.

Third exception. And on the same day the defendant, by its attorney, moved the court to strike out of the second count of the declaration, all allegations therein contained, relative to the plaintiff being engaged in business by the use of the property levied upon under the writ of attachment, and that its business was interrupted, hindered, destroyed and ruined by reason of the said writ, but the said court denied the said motion, to which action the defendant did then and there except.

Fourth exception. And on the same day the defendant, by its attorney, moved the court to strike out of each count of the declaration all allegations appearing therein, stating that the allegations

appearing im plaintiff's affidavits as to the special grounds for attachment in the cause therein referred to were false and untrue, but the court denied the said motion, to which action the defendant did then and there except.

Fifth exception. And afterwards, on April 24th, 1899, at a term of said court, the defendant applied to the court for leave to file the following traverse of certain allegations of the declaration, which application was by the court denied, and to said denial the defendant did them and there except, the said traverses being in the words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, a Corporation, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Defendant.

Now comes the defendant in the above-stated cause, The Fidelity & Deposit Company of Maryland, by R. H. Liggett and D. U. Fletcher, its attorneys, and traversing certain material allegations of the first count of the plaintiff's declaration, says:

1. That it is untrue, as alleged in said count, that the Atlantic Lumber Company improperly caused the sheriff of Duval county, Florida, to levy on the property in said count mentioned, and take said property into his possession and custody for a long period of time, to wit: one month; and further traversing said allegation, the defendant alleges that the property in said count mentioned
44 was only taken into the possession and custody of the said sheriff for a period of ten days, and that, to wit: on October 11th, 1897, all of the said property was by the said sheriff released from his possession and custody and delivered and restored to the defendant.

2. That it is untrue, as alleged in said declaration, that each of the allegations in the said affidavit for attachment stating the existence of special statutory grounds for attachment were false and untrue when made; and the defendant hereby traverses and denies all the allegations of said count stating that the special statutory grounds for attachment in said affidavit set forth did not exist.

3. That it is untrue, as alleged in said declaration, that by reason of the issuing and levy of the said writ of attachment the plaintiff's business was seriously injured for a long period of time, to wit: for six months, and that the plaintiff was thereby interrupted, hindered, delayed and obstructed in its business for the period of, to wit: six months and upwards, to the great injury and damage of the plaintiff; and the defendant hereby traverses and denies all of the said allegations.

4. That it is untrue, as alleged in said declaration, that the plaintiff, by reason of the premises therein set forth and the levy of said writ of attachment in said count stated, was put to great expense

and trouble in and about procuring the dissolution of said attachment, and compelled to pay out large sums of money for traveling expenses, and that it was damaged in other large sums in consequence of the said writ and levy, by not being able to perform contracts and fill orders for manufactured timber and lumber; and the defendant hereby traverses and denies all of said allegations.

And the defendant traversing certain material allegations of the second count of the plaintiff's declaration, says:

1. That it is untrue, as alleged in said declaration, that the Atlantic Lumber Company improperly caused the sheriff of Duval county, Florida, to levy on the property in said count mentioned, and to take all of said property into his possession and custody and to deprive the plaintiff of the possession and use thereof for a long period of time, to wit: for six months; and the defendant hereby traverses and denies all of the said allegations.

2. That it is untrue, as alleged in said declaration, that each of the said allegations in the said affidavit for attachment stating the existence of special statutory grounds for attachment were false and untrue at the time they were made, and made without just cause; and the defendant hereby traverses and denies all of the said allegations of the said count stating that the special statutory grounds for attachment in said affidavit set forth did not exist.

3. That it is untrue, as alleged in said declaration, that by reason of the issuing and levy of the said writ of attachment the plaintiff's business was destroyed and ruined for a long period of time, to wit: for six months, and that the plaintiff's business was wholly lost to it, and that the plaintiff by the reason aforesaid was interrupted, hindered and delayed and obstructed in its said business for the period of, to wit, six months and upwards, to the great damage and injury of the plaintiff; and the defendant hereby traverses and denies all of the said allegations.

4. That it is untrue, as alleged in said declaration, that by reason of the premises therein stated, and the levying of the said writ of attachment in said count stated, the plaintiff was put to great expense and trouble in and about procuring the discharge and dissolution of the said writ of attachment, and compelled to pay out large sums of money for traveling expenses of the officers and agents of plaintiff to attend court, and in preparing for the trial of the motion to dissolve the said attachment, and was compelled to pay out other large sums of money as costs, and that it was damaged in other large sums of money by not being able in consequence of the said writ and levy thereof to perform contracts and fill orders for the manufacture of timber and lumber; and that it was damaged in other large sums of money, being compelled to pay the salaries of its officers and employés when idle, by reason of the said writ and levy; and the defendant hereby traverses and denies all of the said allegations.

R. H. LIGGETT,
D. U. FLETCHER,
Attorneys for Defendant.

STATE OF FLORIDA, }
Duval County. }

Before me, the undersigned, a notary public in and for the State of Florida at large, personally came, within the county of Duval, and State of Florida, R. Bowen Daniel, who, being by me duly sworn, says that he is the agent of the Fidelity and Deposit Company of Maryland for the purpose of making this affidavit; that he has read the foregoing traverses of various allegations of the declaration of the plaintiff filed in this cause; and that the said traverses are true as he is informed and believes.

R. BOWEN DANIEL.

Sworn to and subscribed before me this 24th day of April, 1899.

ERNEST C. BIXLER,
[SEAL.] *Notary Public, State at Large.*

46 (Indorsed:) Traverse of certain allegations of declaration. Application to file denied, April 24th, 1899. J. W. Locke, judge.

And afterwards on the — day of January, 1900, the said cause came on to be tried before the said court, and a jury was duly sworn and impaneled to try the issues between the plaintiff and defendant, and during the course of said trial, the plaintiff offered evidence tending to prove that on October 1st, 1897, it had a certain contract with the Yellow Pine Lumber Company, for the sale and delivery to it of all the timber and one-quarter of the boards manufactured by the plaintiff during the year 1897, and the defendant did object to the introduction of the said evidence on the grounds that it was immaterial, and that any damage resulting to the plaintiff by reason of said contract, were too remote to be attributed to the attachments. But the court admitted the said evidence and allowed the plaintiff to prove that on October 1st, 1897, the plaintiff had a contract with the Yellow Pine Lumber Company for the sale and delivery to it of all the timber and one-quarter of the boards manufactured by the plaintiff at its mill during 1897, to which ruling the defendant did then and there except, and this constitutes the defendant's sixth exception.

Seventh exception. And during the course of the said trial, the plaintiff offered evidence tending to prove that on the 1st day of October, 1897, there were negotiations pending between it and the Sheppard-Morse Lumber Company, for the loan of the sum of $25,000 to the plaintiff, to be secured by a mortgage upon the plaintiff's mill plant, and boards thereafter to be manufactured by the plaintiff at its said mill, and that the said boards so manufactured were to be purchased by the said Sheppard-Morse Lumber Company, for a period of three years, at the rate of 1,000,000 feet per year, at the then existing market price, and the proceeds thereof, applied to the liquidation of said loan, and there was evidence tending to show that the levy of the writs of attachment prevented the carrying out of said contract; and the defendant objected to the admission of the said testimony on

the ground that it was immaterial and irrelevant, to the issues in the case and that any damages that may have been sustained by the plaintiff, in consequence of the said contract, not being consummated, were too remote to be recovered in this suit, but the said court did then and there overrule the said objection, and permitted the plaintiff to prove the substance of its said offer, to which ruling of the court the defendant did then and there except.

47 Eighth exception. And thereupon, afterwards, on the trial of said cause, the plaintiff proved that it had executed a forthcoming bond in the sum of $100,000 for the property levied on and offered to prove by Charles L. Bucki, a witness for the plaintiff, that the plaintiff had been compelled to pay a premium of $750.00 to the surety which executed said bond; to the introduction of which testimony the defendant by its attorneys did then and there object on the ground that the amount of such premium could not be recovered in this suit, and because it was not claimed in the pleadings herein; but the court did overrule such objection upon the ground that said expense was a general damage that would necessarily be contemplated by the defendant and permitted the plaintiff to prove that on November 4th, 1897, it gave a forthcoming bond in the amount of $100,000 to release the personal property levied on and that it was compelled to pay the sum of $750.00 in order to procure a surety on said bond, to which ruling of the court the defendant did then and there except.

Ninth exception. And during the further progress of the case, the plaintiff offered to prove by Charles L. Bucki, a witness therein, what the profits of the plaintiff's mill had been between March 1st, 1897, and October 1st, 1897; to the introduction of which testimony the defendant by its attorneys did then and there object on the grounds that it was immaterial and because neither injury to business or loss of profits could be recovered in this suit, and on the further ground that the profits made prior to October 1st, 1897, was no proper criterion of what might be made after that time; but the court overruled such objection and permitted the witness to testify that during such period the profits of saw-mill had been as follows: $8,722.40 for March; $7,966 in April; $8,154.48 in May; $3,269.81 in June; $5,067.48 in July; $1,932.12 in August; and $422.00 in September, to which ruling of the court the defendant did then and there except.

Tenth exception. And during the further progress of the trial, the plaintiff offered to prove that on November 4th, 1897, it executed a mortgage on its mill to the Fidelity and Deposit Company of Maryland, to secure it as surety upon a forthcoming bond in the amount of $100,000, given to secure the release of the logs and lumber levied on, and that the lien of said mortgage was not released until June 6th, 1899, and to the admission of such testimony the defendant did then and there object on the ground that it was incompetent and immaterial, but the court overruled the said

48 objection and admitted the said testimony to which ruling the defendant did then and there except.

Eleventh exception. And during the further progress of the trial

the plaintiff offered to prove the amount of lumber sawed by its mill in each month from October 1st 1896, to October 1st, 1897; to the admission of which evidence the defendant did then and there object on the ground that the same was immaterial and because the same was incompetent for the purpose of establishing a claim against the defendant for damages, but the court did overrule the objection and permitted the plaintiff to prove the amount of lumber it had manufactured monthly between October 1st, 1896, and October 1st, 1897; to which ruling of the court the defendant did then and there except.

Twelfth exception. And during the further progress of the trial the plaintiff having first proved that the sheriff levied the writs of attachment upon and took possession of the plaintiff's logs on October 1st 1897, at 6 o'clock p. m., and held possession of them until October 11th, or seven working days when he surrendered possession of them to the plaintiff to be sawed up into lumber, and it having also been first established that these logs had been furnished to the plaintiff by the Atlantic Lumber Co., and that on October 1st, 1897, and until the present time, the plaintiff was indebted to the defendant in the sum of $8,000 and upwards on account of the purchase price of said logs, and it having also been established that the saw-mill was a fixture and that the sheriff did not take it into his possession but levied on it as real estate, and it having been likewise established that the plaintiff resumed the running of its mill on October 11th, 1897, and continued running it until plaintiff had sawed up all the logs which it had on hand and that it could purchase in the market; he the plaintiff offered to prove that it had various persons employed by the year in connection with its business of manufacturing lumber, and that the period of their service dated from April 1st, 1897; and the defendant did then and there object to the admission of said testimony on the grounds that the same was immaterial and that any damages resulting to the plaintiff by reason of such fact were too remote to be recovered in the suit on the bond; but the court overruled the objection of the defendant and permitted the plaintiff to prove that on October 1st, 1897, the plaintiff had in his employ a superintendent of its mill at an annual salary of $2500.00, a president at an annual salary of $5,000.00, a planing-mill superintendent at an annual salary of $1500.00;
49 an auditor at a salary of $1200.00 per year; a secretary and treasurer at a salary of $3,000.00 per year, two stenographers, one at a salary of $1,000, and another at a salar of $720 per year; a book-keeper at a salary of $1200.00 per annum; two salesmen at a salary of $600.00 per annum, and that these parties had been employed April 1st, 1897, for the period of a year, to which ruling of the court the defendant did then and there except.

Thirteenth exception. And during the further trial of the cause, it having been claimed by the testimony of the defendant and admitted by the plaintiff that the saw-mill plant of the plaintiff was a fixture or a part of the realty, and it having been established that the sheriff did not take the same into his possession, but levied the writ of attachment upon it according to law, the plaintiff offered to prove

by one C. L. Bucki that during the time the mill was under attachment it employed four watchmen to watch the mill, whom plaintiff paid $75.00 per week; and the defendant did then and there object to the admission of said testimony on the ground that the same was immaterial and on the further ground that the sheriff had not *been* taken possession of the mill, but the court overruled the objection and permitted the witness to testify that the plaintiff employed four watchmen at an expense of seventy-five dollars per week who watched the mill during the time the lien of the attachment was upon it to which ruling of the court the defendant did then and there except.

Fourteenth exception. And during the further progress of the trial, it having been established by the evidence, that the logs and lumber levied on were soon thereafter surrendered to the plaintiff, in consequence of the execution of forthc-ming bonds, therefor, and that part of the lumber on hand and that manufactured from the logs was soon thereafter sold by the plaintiff, the defendant propounded the following question to one Charles L. Bucki, a witness at said trial:

"What application was made of the proceeds of this lumber that was sold from the mill after October 1st, 1897?"—for the purpose of showing that the plaintiff made use of the money received for the lumber immediately upon its receipt and without embarrassment on account of the forthcoming bonds, but the court sustained an objection to said question on the ground that it was immaterial, to which ruling of the court the defendant did then and there except.

14½. And during the progress of the trial the plaintiff introduced testimony to the effect that on October 1st, 1897, it had a number of officials in its employ, upon an annual salary aggregating $15,000 and it was further established by the testimony that the mill did not run between October 1st, 1897, and October 11th, 1897, and that on the 16th day of November, 1897, the mill finally closed down for want of logs to saw, and that the defendant prior to December 28th, 1897, sold all of the lumber which it had had on hand December 1st, 1897, and which it subsequently manufactured, and had shipped the same away from the mill except about two million feet which was on the 28th day of December, 1897, seized under writs of attachment issued by other creditors of the plaintiff, but which said lumber was included in the forthcoming bond, and it was further established by the evidence that the year of each of the said employés expired April 1st, 1898, and there was no testimony to show that the plaintiff had sustained any damages by reason of the said employés remaining idle during the time the mill was shut down for seven working days in October, 1897, further than the fact that they were on salary during such time; and thereupon after the plaintiff and defendant had completed the taking of further testimony, the plaintiff moved the court to exclude all of the testimony in regard to the plaintiff's having certain employés in its employ on annual salary, and withdraw said testimony from the consideration of the jury, on the grounds following:

First. Because the said testimony failed to establish any legitimate claim for damages against the defendant.

Second. Because damages growing out of the fact of the employment of these employés, if any were sustained, were too remote to be recovered in the suit on the bond.

Third. Because said testimony failed to show that the plaintiff could have made use of the services of its said employés even though no attachment had been issued.

Fourth. Because the mill manufactured the average monthly quantity of lumber in October, 1897, and it appears that the plaintiff got substantially the same amount of services as in other months.

Fifth. Because the mill finally shut down November 16th, 1897, within the year for which these employés were employed, and ten days later than it would have shut down, but for the shut-down in October, 1897.

But the court denied the said motion of the defendant, to which action the defendant did then and there except.

And the evidence adduced at the trial established the following facts:

That the plaintiff had about 3,000,000 feet of logs in its boom on Friday, October 1st, 1897, which had been furnished to it by the Atlantic Lumber Company, and upon the purchase price
51 of which about $8,000.00 was then due, and about five million feet of lumber, and that the writs of attachment were on that day levied on said logs and lumber; that the saw-mill plant was a fixture and that the sheriff never took possession of it, and only levied the writ of attachment so as to create a lien upon it; that the sheriff held possession of the logs until October 11th, 1897, when he permitted the plaintiff to take possession of them, and to saw them up, with the understanding that the lumber manufactured therefrom should take the place of the logs; that the mill was closed down from October 1st, to October 11th, or seven working days, and that the plaintiff started up its mill on October 11th, 1897, and ran it at its full capacity until November 7th, 1897, during which time it sawed up the logs levied on; and that on November 12th, 1897, plaintiff resumed sawing and continued until November 16th, 1897, during which time it sawed up about 400,000 feet of logs, which it purchased after October 1st, 1897, and that the mill was then closed down for want of logs to saw; that prior to October 1st, 1897, the plaintiff had been supplied with logs by the Atlantic Lumber Company at the rate of 2,000,000 feet per month, but after that time said Atlantic Lumber Company refused to deliver any more logs to the plaintiff, and that the plaintiff failed to procure from any other source the logs with which to carry on its business.

That on October 1st, 1897, the plaintiff had on hand various orders for lumber which had not been sawn out, and which it was unable to completely fill; and that 1,250,000 feet of the lumber on October 9th, 1897, was delivered to the plaintiff, it giving a forthcoming bond therefor, and at the same time the sheriff upon being indemnified by the plaintiff, permitted the plaintiff to load the bal-

ance of the lumber on vessels and ship it North as fast as the vessels arrived, and on November 4th, 1897, the plaintiff gave the sheriff a forthcoming bond in the penalty of $100,000 and that thereupon the sheriff delivered to it all of the lumber, logs and other personal property; that prior to December 28th, 1897, all of the lumber on hand October 1st, 1897, and that manufactured afterwards from the logs levied on, and that manufactured from about 400,000 feet of logs subsequently purchased, was delivered by the plaintiff to the parties in New York and Boston with whom it had contracts on October 1st, 1897, except a portion of old or second-class board which was, on December 28th, seized under the attachments of other creditors of the plaintiff, and there was no testimony to show or tending to show, that the plaintiff got any less for said lumber than it would have received had no attachment been levied, or to show
52 that the lumber deteriorated while in the sheriff's possession or was injured in any way, and it was established by the evidence that the price of lumber improved after October 1st, 1897; that there *was* shipped from the mill in October 1897, 1,510,750 feet of lumber; 2,658,284 feet in November and 950,324 feet in December; that plaintiff was unable to completely fill the contracts which it had on hand October 1st, 1897, owing to the fact that it had not sufficient logs on hand from which to cut the orders and was unable to buy any others; and Charles L. Bucki, president of the company, testified that the mill had made the following profits: In March, 1897, $8,722.40, in April, $8,154.48, in May $7,966.00, in June $3,269.80, in July $5,067.48, in August $1,932.00, and in September $422.00. And the said Charles L. Bucki testified that the small profits realized in September and August, was due to the small quantities of lumber manufactured in those months, to wit, 1,984,169 in August and 1,478,633 in September. And there was testimony tending to establish that on October 1st, 1897, the plaintiff was negotiating with the Sheppard-Morse Lumber Company of Boston for a loan of $25,000.00 from said Sheppard-Morse Lumber Company, to be secured by a mortgage on plaintiff's mill plant, and certain piles of lumber which the said Sheppard-Morse Lumber Company were to obligate themselves to buy from the plaintiff at the rate of a million feet a year for the period of three years, at the price then prevailing, and the said Charles L. Bucki testified that on October 1st, 1897, during the forenoon, an officer of said Sheppard-Morse Lumber Company telephoned him that his company would execute the contract and send it and the money that afternoon.

It was established by the testimony that the Degnen-McLean Lumber Company had made a claim for damages against the plaintiff on account of loss, sustained by said Degnen-McLean Lumber Company, through the non-delivery of lumber to it by the plaintiff, subsequent to October 1st, 1897.

And Charles L. Bucki, president of the company, testified that about October 6th, he came from New York to Jacksonville to give his attention to the attachment suits and brought with him J. D. Bucky, a stockholder of the company, to assist him, and that thereafter he devoted a great deal of his time to the lawsuits, but there

was no testimony to show that the plaintiff had incurred any other expense in and about the defense of the attachment proceedings beyond the testimony in regard to the amount incurred for attorneys' fees and the sum of $415.00 costs, for which the plaintiff recovered judgment against the Atlantic Lumber Company in the said
53 attachment proceeding, which judgment the evidence showed had been paid.

And H. W. Simmons, a witness for defendant, testified that he was the financial manager of the plaintiff during the summer of 1897, and that the credit of the plaintiff was bad in August and very bad in September, and that the plaintiff could not in September, 1897, get any loans from New York banks, and that on October 1st, 1897, it was necessary for the plaintiff to have a loan of $25,000 in order to continue in business at all, and a loan of $50,000 in order to continue its business successfully, and that Charles L. Bucki, president of said plaintiff, testified that said H. W. Simmons was not authorized to represent the plaintiff in obtaining any loan.

And Bion H. Barnett testified that he was the cashier of the National Bank of Jacksonville, Florida, and that the plaintiff did its Jacksonville banking business with his bank, prior to October 1st, 1897, and that the credit of the plaintiff at his bank in September, 1897, was limited.

One John N. C. Stockton, a witness called by the defendant, testified that on February 22nd, 1898, he leased the mill of the plaintiff for twelve months at a rental of one thousand dollars per month; that during the period of his lease he manufactured only between six and seven million feet of lumber and that the reason he did not manufacture more was that he did not wish to risk more money and that he did not believe that the mill, if it had been operated at its full capacity that year, would have made any money, and evidence established that during the time the said Stockton operated said mill, it was operated at a loss of $18,000.00. That said Stockton had no practical experience as a manufacturer of lumber.

And it was established by the evidence that of February 5th, 1899, the entire mill plant, including the lands, wharves, boom and appurtenances were sold under execution to satisfy a judgment of one Schwaab for $2,200.00, on obligations incurred after the writ of attachment was levied, and was purchased by Henry Weiler, a director in the company, for $2,300.00 who purchased the same in the interest of Charles L. Bucki.

Fifteenth exception. And thereupon all the evidence pertinent to said charge being contained in the foregoing statement of evidence, which is hereby made a part of this exception, the court, at the plaintiff's request, charged the jury as follows, to wit:

"One of the principal points in this action is as follows: The plaintiff claims that it should be compensated for the loss of the use of its mill properties, caused by these attachments. The
54 defendant claims that the plaintiff is not entitled to be compensated for the loss of the use of its mill properties, in consequence of the attachment, because the defendant asserts, the plaintiff was in such financial condition that it could not have con-

tinued in business even if the attachments had not been issued and levied. This is a question of fact for you to determine upon all of the evidence in the case, and if you believe from all of the evidence in the case that if these attachments had not been issued and levied upon the plaintiff's properties, it, the plaintiff, would have been able to have continued in business, then you will find against the defendant on this contention, and award to the plaintiff such an amount of damages as upon the evidence you feel convinced the plaintiff sustained as a direct and proximate consequence of these attachments."

And the defendant did then and there, before the jury retired, except to the giving of the foregoing charge on the following grounds:

1st. Because damages to business were too remote and speculative, and

2nd. Because there was no evidence from which damages to business could be estimated with certainty, and the instruction permitted the jury to speculate as to such damages, and because the same conflicts with the charge given by the court of its own motion.

Seventeenth exception. And the court, at the request of the plaintiff, gave the jury the following instruction, the testimony pertinent thereto being contained in the foregoing statement of the evidence which is hereby made a part of this exception. And it further appearing that the Degnen-McLean Lumber Company, one of the parties to whom the plaintiff had contracted to sell lumber, had made a claim against plaintiff about the latter part of November, 1897, on account of lumber it had had to purchase at retail to supply some ordered from plaintiff and which plaintiff had failed to deliver, but there being no evidence to show that plaintiff was liable therefor, further than the testimony of Charles L. Bucki, that the said company had rendered the plaintiff a bill therefor.

"Another element of damage claimed by the plaintiff, is that the attachment interrupted the business and by such interruptions and the consequences thereof, resulting from the attachments, the plaintiff was prevented from sawing and shipping lumber to ascertain parties in Baltimore, New York and Boston, which plaintiff agreed to furnish prior to October 1st, 1897; that such losses consist
55 of certain amounts the purchasers of the lumber had to pay to supply what they had purchased from the plaintiff. The court instructs you that the defendant is liable for all such losses, if any resulted as a direct consequence of the attachments."

And the defendant did then and there, before the jury retired, except to the said charge as a whole on the ground that such damages were too remote and particularly to the last two paragraphs of said charge on the ground that such damages were too remote and because they were not claimed in the declaration.

Seventeenth exception. And the court, at the request of the plaintiff, gave the following instruction to the jury, all the evidence pertinent thereto being contained in the foregoing statement of the evidence which is hereby made a part of this exception by reference, to wit:

"The jury are the exclusive judges as to the effect of the writs of attachment upon the business of the plaintiff, that is to say: when you consider any item of damages in this case, you are the sole judges as to whether the writs of attachment and the levy of the same, directly and proximately caused the damage of injury, or whether there was some other intervening cause for the damage or injury, independent of the attachment that would have caused the damage if the attachment had not been issued;" and the defendant, then and there before the jury retired, excepted to the said charge on the ground that it permitted the jury to allow damages for injury to business which are too remote and because the said instruction imposed no other restraint upon the jury in the assessment of damages than such as their caprice might suggest, and because said charge conflicted with that given by the court of its own motion.

Eighteenth exception. In charging the jury, the court, at the plaintiff's request, charged the jury as follows:

All the evidence pertinent to said charge being contained in the foregoing statement of the evidence which is hereby made a part of this exception by reference, to wit:

"It is the province and right of the jury to decide from the evidence whether or not these writs of attachment defeated and prevented the carrying out and performance of any contract with Sheppard, Morse & Company, for the loan of money or for the delivery of lumber, and damages sustained by the plaintiff by such non-delivery, and it is your right and duty to decide upon the
56 evidence whether or not these writs of attachment prevented the plaintiff from delivering any lumber to the Degnen-McLean Company, or E. B. Hunting & Company, which plaintiff prior to October 1st, 1897, had contracted to deliver and if you find such prevention of deliveries to award such damages as the evidence justified," and the defendant did then and there, before the jury retired except to the giving of the said charge on the ground that such damages were too remote and that said charge was in conflict with the general charge of the court and because there was no evidence before the court which justified the submission of said question to the jury.

Nineteenth exception. And the court, at the instance of the plaintiff, gave the following instruction to the jury, the evidence pertinent thereto being contained in the foregoing statement of the evidence which is hereby made a part of this exception by reference, to wit:

"You are the exclusive judges as to the facts of this case; you are the exclusive judges of the amount of damages the plaintiff sustained as the direct and proximate consequence of the issuing and levying of these writs of attachment; these damages consist of two general consequences:

1st. All moneys paid out and all expenses incurred in and about and attending to the preparation of the trial of the motions to dissolve the attachments and on the trial of such motions which

became reasonably necessary as a direct consequence of the attachment;

2nd. All consequential damages, that is, all damages caused by the interruption of the plaintiff's business either by disabling the plaintiff from operating its mill or disabling it to deliver timber and lumber it had agreed to deliver prior to October 1st, 1897, if you believe from the evidence that the direct and proximate effect of such attachments caused such interruption of the plaintiff's business."

And the defendant did then and there, before the jury retired, except to the second paragraph of said charge, on the ground that the damages to business and loss of profits on contracts were too remote and speculative and because there was no evidence that justified the submission of such charge to the jury, and because said charge was in conflict with the charge given by the court of its own motion.

Third. And the said judge, in his general charge, did of his own motion instruct the jury as follows:

Now the determination of this question by you becomes very much more difficult on account of other attendant circumstances,
57 circumstances attending the levy of the writ of attachment.

At the same time that the writs of attachment were levied, there were two common-law suits commenced, both of which have been terminated. The next attendant circumstance is that the Atlantic Lumber Company cancelled its contract, or attempted to cancel it, that is, the contract came to an end by the Atlantic Lumber Company refusing and ceasing to furnish any more logs to the Bucki Company. Therefore, I say, the three combining circumstances, the levy of the writ of attachment, the ceasing to furnish logs under that contract and the bringing of the common-law suits, unite in being causes for a subsequent suffering of damage by the Bucki Company. The law is this, that where a party sets in force a wrong, an intervening cause will not prevent the effect of that wrong; a party instituting or setting forth a wrong may be held liable for all damages that occur from it, that can be traced directly to it, but in this case, the writs of attachment did not cause the suspension of the furnishing of the logs, nor did the suing out of the writs of attachment cause the beginning of the common-law suits. It makes it more difficult for you to determine, and, therefore one of the important questions for you to determine is, just what damages resulted alone from the writs of attachment, not how much the Bucki Company was damaged at all, from the combination of circumstances, but how much you should charge directly to the issuing of the writs of attachment.

Taking into consideration the several causes tending to interfere with the business of the Bucki Company, tending to injure their credit and break up their business, I was fully satisfied from the evidence that there can be no certain, positive, direct amount arrived at which could be charged to the levying of the writs of attachment as separated and distinct from the other interfering causes in the case. I therefore, as you have seen, during the trial of the case,

granted a motion to strike all testimony relating to what the Bucki Company might have made in the future from conducting its business considering the uncertainty of procuring a loan, of procuring timber lands, of procuring a logging plant, of procuring logs, or running its mill and of selling lumber at a profit; the uncertainty of all those questions was so great, that there was no foundation under the law of determining certainly and directly and definitely any amount of damages which could be taxed against a party in this case. Therefore, I instruct you, gentlemen, the damage must be confined to the direct effect of the levy upon the mill and the lumber for the time being, and these damages you will determine from the testimony.

58 Remembering that your duty is to find just how much the party has been damaged and suffered directly, I consider as a matter of law, that the question of damage to credit and the profits that the plaintiff might have made had it continued business is too uncertain and too remote. What you can consider as clear, distinct and certainly proven damages you will find."

Nineteenth and one-half exception. The order made by the court excluding testimony in regard to profits which is referred to in the foregoing charge, being in the words and figures following, to wit: This cause coming on to be heard on a motion of the defendant's attorney to exclude certain testimony from the jury, and it being considered that under the testimony introduced any damages arising from consideration of injury to credit or loss of profits would be too remote, uncertain and speculative, it is therefore ordered that this motion be granted as to the testimony relating to the cost of manufacturing of lumber and the supply of timber lands, all testimony as to the daniage to credit and loss of profits and all evidence relative to the market prices of lumber subsequent to the attachment. That in regard to the profits plaintiff's mill had been making prior to October 1st, 1897, be retained and considered only for the purposes of determining the actual damages suffered during the time the operation of the mill was suspended on account of the attachments, and the motion be denied in all other respects. To which ruling and order of the court the defendant, by its attorney, did then and there except and this constitutes the defendant's exception No. 19½.

Twentieth exception. And the plaintiff having been permitted to prove over defendant's objection that on October 1st, 1897, it had on hand certain contracts for the sale and delivery of lumber to the Yellow Pine Lumber Company, the Degnen-McLean Company, and E. B. Hunting & Company, and it being established beyond dispute that each of these parties were willing to accept the lumber under their contracts long after the 16th day of November, 1897, on which day the plaintiff's mill was closed down for want of logs to saw, and there being evidence tending to show that the failure to fill these orders was due entirely to the inability of the plaintiff to buy the logs from which to cut the lumber for said orders, the defendant, after the taking of testimony had been closed, and before the jury retired, requested the court in writing to instruct the jury as follows:

"The court instructs the jury that they shall allow the plain-
59 tiff no damages on account of the plaintiff's inability to fill orders for lumber after October 1st, 1897, if such inability was due to the fact that the plaintiff was unable to buy the logs from which to cut said lumber," but the court refused to give the jury the said charge, and to the said refusal the defendant did then and there, before the jury retired, except.

It was established by the testimony that the writs of attachment were levied on the lumber at the mill and about three million feet of logs in the boom on October 1st, 1897, and that the mill was shut down from October 1st, 1897, to October 11th, 1897, or seven working days, and there was testimony tending to show that such shutdown was due to the fact that the sheriff hei possession of the said logs under the writs of attachment; it was further established by the evidence that the mill was started up on October 11th, 1897, under an indemnity bond, as herein stated, and ran at its full capacity until the logs in the boom were sawed up, and that the mill finally closed down on November 15th, 1897, and was not thereafter operated by the plaintiff because of the lack of logs to saw; that the sawmill was a fixture and that the sheriff levied the writ for $75,000 upon it, but did not take possession thereof.

And the said Charles L. Bucki testified that on October 1st, 1897, the plaintiff had in its employ the following salaried officers, at the following annual salaries: A mill superintendent at a salary of $2,500.00; a president at a salary of $5,000.00; a planing-mill superintendent at a salary of $1,500.00; an auditor at a salary of $1,200.00 per year; a secretary and treasurer at a salary of $3,000.00; two stenographers, one at a salary of $1,000.00 and another at a salary of $750.00; a book-keeper at a salary of $1,200.00, and two salesmen at salaries of $600.00 each, and that their year began April 1st, 1897; that the secretary, one stenographer, a book-keeper and the two salesmen were employed in the New York office and the others were employed in Jacksonville; there was testimony tending to establish that the New York employés were idle in October, 1897, during the time the mill was shut down, but there was no testimony to show whether the Jacksonville employés were employed or not, except that the auditor testified that he was at work the whole of the month of October, 1897; it was established by the evidence that the mill wharves were crowded with the lumber during the months of August and September, 1897, and that as a result of this, the mill lost ten working days in August and thirteen in September, and that on October 1st, 1897, the wharves were as full of lumber as they could be got.

The testimony further established that on October 1st, 1897,
60 the plaintiff's indebtedness was about $64,000.00, which included $5,900.00 due its day laborers at the mill, and that on that day it had in cash $112.50. That all said laborers were paid on Oct. 11th.

21st exception. And thereupon the court, of its own motion, gave the following charge to the jury, the evidence pertinent thereto being included in the foregoing statement:

"Another point is the damages claimed for salaries of the officers and employés of the Bucki Company for the time of their enforced idleness; that is, the time they continued on salaries, and on account of the granting of the writs of attachment were suspended from active operations. You have heard the testimony upon that, and you will determine just how far the Bucki Company suffered in damages on account of the time that their employés were compelled to remain idle and earned nothing, although they were on wages."

To which charge the defendant did then and there, and before the jury retired, except.

22nd exception. And thereupon the defendant, before the jury retired, requested the court in writing to instruct the jury as follows:

"The jury are instructed that the inquiry in regard to the loss of time by the employés shall be limited to the period between October 1st, 1897, and October 11th, 1897, and that no damages can be allowed for any time lost by plaintiff's employés after October 11th, 1897;" but the said court refused to give such charge, to which action the defendant, before the jury retired, did except.

23rd exception. And thereupon, the defendant, after the taking of the testimony had been completed, and before the jury retired, requested the court in writing to give the following charge to the jury:

"The court instructs the jury that they cannot find any damages for the plaintiff on account of the loss of time of its employés unless they find from the evidence that the time of some of the employés was actually lost on account of the levy of the writs of attachment. And if the *the* jury should find from the evidence that any time found to have been lost by the employés would have been lost even though no attachment had been levied, then they shall find no damages for the plaintiff, on account of such lost time," but the court refused to give the said instruction, considering that the substance thereof
61 had been included in the preceding charge given by the court; to which action the defendant did then and there, before the jury retired, except.

24th exception. And the defendant, after the taking of testimony had been completed, and before the jury retired, did request the court in writing to give the following charge to the jury:

"If the jury finds from the evidence that the period of seven working days would have been lost in October, and that the mill ran seven days longer in November than it would have done had the shut-down in October not occurred, then you shall find no damages for the plaintiff, on account of such shut-down," but the court refused to give the said instruction; to which refusal the defendant did then and there, before the jury retired, except.

25th exception. And thereupon, after the taking of testimony had been completed, and before the jury retired, the defendant requested the court in writing to give the following charge to the jury:

"If the jury finds from the evidence that the plaintiff manufactured as much lumber after October 1st, 1897, as it would have done had no shut-down occurred in October, then they shall find

no damage for the plaintiff, on account of such shut-down," but the court refused to give the said instruction, to which action the defendant did, then and there, before the jury retired, except.

The foregoing requests by the defendant for the instructions specified in exceptions numbered 22, 23, 24, 25, and 25½ were predicated upon the evidence stated in the foregoing statement of evidence and upon the following evidence:

It was established by the evidence that the sheriff levied the writs of attachment on all the saw-logs of the plaintiff and that the mill did not run between October 1st and 11th, 1897, or seven working days, and that the wharves of the plaintiff were full of lumber on October 1st, 1897, and that the plaintiff on that day owed its employés $5,900.00, and that the same was not paid to them until October 11th, and it being established by the evidence that the highest monthly average of the output of the mill was between 2,000,000 and 2,500,000, and that the plaintiff sawed 2,514,343 feet of lumber between October 11th and November 1st, 1897, and it further appearing that the plaintiff shut down its mill finally on November 16th, 1897, because of its inability to obtain logs to saw, and there being evidence tending to establish that the plaintiff could not for some time have obtained the logs necessary
62 to run its mill to its full capacity, even though no attachment had been issued against its property.

And there was testimony tending to establish that the employés in the New York office were not employed during the time the mill was shut down in October, 1897, but none to show whether the Florida employés were idle or not, beyond the fact that the mill was shut down, and the testimony of the auditor that he was engaged the whole time. And it was established by the evidence that the plaintiff was never at any time deprived of the possession of its mill or denied full authority and control over it.

And it was established by the evidence that the writs of attachment for $75,000.00 and $8,980.00 were on October 1st, 1897, levied upon all the logs and lumber at the plaintiff's mill, and that the same were taken possession of by the sheriff under said writs: that on the 9th day of October, 1897, the plaintiff gave the sheriff two certain indemnity bonds, in order to secure the right to saw up the saw-logs and ship its lumber, which are in the words and figures following:

Know all men by these presents, that we, the L. Bucki & Son Lumber Company, Charles L. Bucki, Frederica Bucki, J. M. Des Roches, Roderick G. Ross, Colvin H. Robertson and Philip Walter are held and firmly bound unto Napoleon B. Broward in the sum of twenty thousand dollars, for the payment whereof, well and truly to be made, we jointly and severally bind ourselves and our heirs and representatives respectively.

Signed and seal- this 9th day of October, A. D. 1897.

The condition of the foregoing obligation is such that, whereas, said Broward is sheriff of said county of Duval and State of Florida, and as such sheriff has received certain writs of attachment in the several suits now pending against the L. Bucki & Son Lumber Com-

pany, and as such sheriff has taken possession of certain lumber as the property of said company and is about to relinquish such possession and turn over to certain vessel or vessels in the St. Johns river certain portions of said lumber.

Now, therefore, if the said lumber, or any part thereof, is turned over to said vessel or vessels, and the said Broward is fully paid and indemnified for any and all loss he may suffer because of his relinquishing possession as aforesaid, then this obligation is to be void; else to remain in full force and virtue.

THE L. BUCKI & SON LUMBER CO.,
By CHARLES LLOYD BUCKI, *Pres.* [SEAL.]
CHAS. L. BUCKI.
FREDERICA BUCKI,
63 By CHAS. L. BUCKI, *Att'y-in-fact.* [SEAL.]
J. M. DESROCHES. [SEAL.]
RODERICK G. ROSS. [SEAL.]
COLVIN H. ROBERTSON. [SEAL.]
PHILIP WALTER. [SEAL.]

(Indorsed:) Plaintiff's Ex. 23 read in evidence Jan'y 30, 1900, in L. Bucki & Son L. Co. *vs.* Fidelity & Deposit Co., &c. E. O. Locke, clerk, by Louis Starke, deputy. Indemnity bond.

Know all men by these presents, that we, the L. Bucki & Son Lumber Company, Charles L. Bucki, Frederica Bucki, J. M. Des Roches, Roderick G. Ross, Colvin H. Robertson and Philip Walter are held and firmly bound unto Napoleon B. Broward in the sum of thirty-six hundred dollars, for the payment whereof, well and truly to be made, we jointly and severally bind ourselves and our heirs and representatives respectively.

Signed and seal- this 9th day of October, A. D. 1897.

The condition of the foregoing obligation is such that, that whereas, said Broward is sheriff of said county of Duval and State of Florida, and as such sheriff has received certain writs of attachment in the several suits now pending against the L. Bucki & Son Lumber Company, and as such sheriff has taken possession of certain lumber as the property of said company and is about to relinquish such possession and turn over to certain vessel or vessels in the St. John's river certain portions of said lumber.

Now, therefore, if the said lumber, or any part thereof, is turned over to said vessel or vessels, and the said Broward is fully paid and indemnified for any and all loss he may suffer because of his relinquishing possession as aforesaid, then this obligation is to be void: else to remain in full force and virtue.

THE L. BUCKI & SON LUMBER CO.,
By CHAS. LLOYD BUCKI, *Pres.*
CHAS. L. BUCKI. [SEAL.]
FREDERICA BUCKI, [SEAL.]
By CHAS. L. BUCKI, *Att'y-in-fact.*
J. M. DESROCHES. [SEAL.]
RODERICK G. ROSS. [L. S.]
COLVIN H. ROBERTSON. [SEAL.]
PHILIP WALTER. [SEAL.]

64 (Indorsed:) Indemnity bond. Plaintiff's Exhibit No. 18 read in evidence Jan'y 30, 1900, in L. Bucki & Son L. Co. *vs.* Fidelity & Deposit Co., &c. E. O. Locke, clerk, by Louis Starke, deputy.

That on October 11th, 1897, the plaintiff gave the sheriff a forthcoming bond in the amount of $20,000, which forthcoming bond is in the words and figures following:

In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Fla.

THE ATLANTIC LUMBER COMPANY, Plaintiff,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant.

Forthcoming Bond.

Know all men by these presents, that we, L. Bucki & Son Lumber Company, a corporation organized under the laws of New Jersey, as principal, and Charles L. Bucki, Frederica Bucki, John M. Des Roches, Colvin H. Robertson, Philip Walter and Roderick G. Ross as sureties, are held and firmly bound unto the Atlantic Lumber Company, a corporation organized under the laws of Florida, in the sum of twenty thousand ($20,000) dollars, for the payment whereof well and truly to be made, the said L. Bucki & Son Lumber Company binds itself and its successors, and the said sureties bind themselves, and each of them, and their and each of their executors and administrators.

Signed and sealed this 9th day of October, 1897.

The condition of the foregoing obligations is such that, whereas, the said The Atlantic Lumber Company, on the — day of October, 1897, sued out a certain writ of attachment in a certain suit pending in said court, wherein the said The Atlantic Lumber Company was plaintiff, and the said L. Bucki & Son Lumber Company was defendant, which said writ was levied upon certain property of the said defendant, to wit: one million two hundred and fifty thousand feet of yellow-pine merchantable lumber as the property of defendant.

Now, if the said L. Bucki & Son Lumber Company shall have forthcoming the said property so levied upon, and shall abide the final order of the court, then this obligation shall be null and void; otherwise to remain in full force and virtue.

[Bucki Co. Corporate Seal.]

L. BUCKI & SON LUMBER CO.
CHAS. LLOYD BUCKI, *Pres't.*
C. W. SIMMONS, *Sec'y.*
CHAS. L. BUCKI. [L. S.]

65 FREDERICA BUCKI,
By CHAS. L. BUCKI, [L. S.]
Att'y-in-Fact.
JOHN M. DESROCHES. [L. S.]
COLVIN H. ROBERTSON. [L. S.]
PHILIP WALTER. [L. S.]
RODERICK G. ROSS. [L. S.]

Taken and approved Oct. 11th, 1897.
N. B. BROWARD, *Sheriff.* [SEAL.]

(Indorsed :) In the circuit court, State of Florida, county of Duval. The Atlantic Lumber Company *vs.* The L. Bucki & Son Lumber Co. Forthcoming bond for $20,000, under writ of October 1, '97. Received and approved on the 11th day of Oct., 1897. N. B. Broward sheriff. Plaintiff's Exhibit 11 read in evidence in L. Bucki & Son L. Co. *vs.* Fidelity & Deposit Co., this 22nd day of Jan'y, 1900. E. O. Locke, clerk, by Louis Starke, D. C.

And thereby secured the surrender and possession of 1,250,000 feet of lumber, and that on November 4th, 1897, the plaintiff gave the sheriff a forthcoming bond in the penalty of $100,000.00, which is in the words and figures following:

In the Circuit Court of the United States, Southern District of Florida.

THE ATLANTIC LUMBER COMPANY, Plaintiff,
vs.
L. BUCKI & SON LUMBER COMPANY, Defendant.

Know all men by these presents, that we, L. Bucki & Son Lumber Company, a corporation organized and existing under the laws of New Jersey, as principal, and Charles L. Bucki and Frederica Bucki and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of Maryland, and which has obtained a certificate under the laws of Florida authorizing it to do business as a surety company, under and by virtue of the laws of Florida, as sureties, are held and firmly bound unto the Atlantic Lumber Company, a corporation organized and existing under the laws of Florida, in the sum of one hundred thousand dollars, for the payment whereof well and truly to be made, the said L. Bucki & Son Lumber Company binds itself, and its successors and assigns, and the said The Fidelity and Deposit Company of Maryland binds itself, and its successors and assigns, and the said Charles L. Bucki, and the said Frederica Bucki bind themselves, their and each of their heirs, executors and administrators, jointly and severally, firmly by these presents.

66 Signed and sealed this the 4th day of November, A. D. 1897.

Now, the condition of this obligation is such that, whereas, the sheriff of Duval county, Florida, by virtue of a certain writ of attachment, issued out of the circuit court of Florida in and for Duval county, in a certain cause then therein pending, wherein the said The Atlantic Lumber Company was plaintiff, and the said L. Bucki & Son Lumber Company was defendant, has levied upon the following property, to wit: 4,983,920 feet of sawn lumber and timber, and 3,000,000 feet of round timber, not sawn, all of the value of fifty thousand dollars, fixed by the sheriff of Duval county, Florida, and the said L. Bucki & Son Lumber Company wishes to regain pos-

session of the same. Now, if the said L. Bucki & Son Lumber Company shall have the said property forthcoming, and shall abide the final order of the circuit court of the United States for the southern district of Florida, to which the said action has been removed, and wherein said action is now pending, then this obligation shall be null and void; otherwise to remain in full force and virtue.

[Bucki Co. Seal.]

THE L. BUCKI & SON LUMBER CO.,
By CHAS. LLOYD BUCKI, *President.*
CHAS. LLOYD BUCKI. [L. S.]
FREDERICA BUCKI,
By CHAS. LLOYD BUCKI, [L. S.]
Att'y-in-Fact.

[Fidelity Co. Seal.]

FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Per E. M. M. WARFIELD, *President.*
Attest: H. E. BOSLER, *Secretary.*

Taken and approved November 4th, 1897.
N. B. BROWARD, *Sheriff.* [SEAL.]

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

On this 30th day of Oct., A. D. 1897, before the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and qualified, came Edwin Warfield, president, and H. E. Bosler, secretary, of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself, deposeth and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

67 In testimony whereof, I have hereunto set my hand and affixed my official seal, at the city of Baltimore, the day and year first above written.

FRED S. AXTELL,
Notary Public.

(Indorsed:) Bond. Atlantic Lumber Co. *vs.* L. Bucki & Son Lumber Co. Forthcoming bond for $100,000 under writ No. 2 of Oct. 1, 1897. Received and approved Nov. 4th, 1897. N. B. Broward, sheriff. Plaintiff's Ex. 10 read in evidence in L. Bucki & Son L. Co. *vs.* Fidelity & Deposit Co. by plaintiff this 22nd day of Jan'y, 1900. E. O. Locke, clerk, by Louis Starke, D. C.

And that thereupon the sheriff surrendered to the plaintiff the possession of all the logs, lumber and personal property levied upon by said sheriff, by virtue of said writs; that on November 1st, 1897, the attachment of $9,980.80, mentioned in the first count of the declaration was dissolved, from which order of dissolution no writ of error was taken; that on February 14th, 1897, the court dissolved the writ of attachment for $75,000.00 and ordered the sheriff to immediately return all property levied on to the plaintiff; that on April 25th, 1898, the Atlantic Lumber Company sued out a writ of error directly from the said order of February 14th, 1898, dissolving the writ of attachment and obtained an order directing that said writ of error should operate as a supersedeas, which writ of error was afterwards held by the circuit court of appeals to be unauthorized by law; that final judgment was entered in the common-law action, to which said judgment for $75,000.00 was ancillary on May 7th, 1898; that on July 8th, 1898, the Atlantic Lumber Company sued out a writ of error from said judgment and obtained an order from said court directing that said writ of error should operate as a supersedeas of the said order of February 14, 1898, dissolving said attachment upon the filing of a bond in the penalty of $1,500, with approved security, conditioned to pay all damages and costs, which bond was given; that the circuit court of appeals for the fifth circuit affirmed the said judgment on January —, 1899; that on May 22nd, 1899, the Atlantic Lumber Company applied to the Supreme Court of the United States for a writ of certiorari, which was denied on May 29th, 1899; that the writ of $9,980.80 was ancillary to a common-law action wherein damages to the amount of $15,000 was claimed, and the writ of $75,000.00 was ancillary to a common-law action, wherein $200,000 damages were claimed and that these two suits were consolidated by order of the court, and that on May 7th, 1898, the Atlantic Lumber Company recovered judgment
68 therein for $8,600.00, which remains due and undischarged, and which became a lien on the mill property; that there was no evidence showing or tending to show that the plaintiff had sold said lumber for any less than they could have sold it for had no attachment been levied, and there was no evidence that plaintiff was limited or embarrassed in the use of the money received for the lumber by reason of the attachment, except the effect of its having given a forthcoming bond, and it was established by the evidence that the plaintiff, prior to November 16th, 1897, had sawed up all the logs which it had in the boom at that time, and that prior to December 28th, 1897, it had sold and shipped to parties in New York and Boston all the lumber sawed from these logs and all on hand October 1st, 1897, except a portion of old lumber and second-class boards, which was, on December 28th, 1897, seized under the attachment of other creditors. It was established by the evidence that the plaintiff sold and shipped from the mill the following quantities of lumber prior to December 28th, 1897; In October, 1,510,750 feet; in November, 2,659,284, and in December, 950,324 feet; and there was no evidence tending to show that plaintiff sold said lumber for any less than it would have sold it had no attachment been

levied on it, or that plaintiff was embarrassed in the use of the proceeds thereof any more than the legal effects of the forthcoming bond, or retained the said proceeds to meet the said obligation imposed by the said forthcoming and indemnity bonds; and there was evidence tending to show that for the lumber shipped in October, plaintiff received $14,055.74; for that shipped in November, $22,846.57, and for that shipped in December, $2,483.63.

26th exception. And the court, of its own motion, gave the jury the following instruction, the evidence pertinent thereto being contained in the foregoing statement.

The evidences in this case shows that after ten days there was a forthcoming bond given to the sheriff, and the plaintiff in this case assumed all the risk and responsibility of taking possession of that property. The first bond permitting them to go to work was given on the 11th of October, and there was a million and a half feet of lumber released from this attachment on the 4th of November; there was a forthcoming bond, releasing all the rest of the mill and the property.

"Now, as I say, the plaintiff contends, that as this case continued, this question of attachment continued; that it was suffering under the attachment, the lien of the attachment until the sixth day of June, 1899, when finally the action of the Supreme Court of the United States became conclusive, and these attachments were finally determined beyond further question. That is the contention
69 of the plaintiff; they claim damages by the interference of these writs of attachment for this entire time from the first of October, 1897, up to the 6th of June, 1899."

"The defendant contends that plaintiff having taken possession of the property, used it, sawed it up, used their mill, leased their mill, and used their lumber, sawed their lumber, filled their contracts as far as they saw fit, and that the contention of the plaintiff is not sound or is not just under the law. I instruct you in regard to that point, that although the plaintiff in this case took possession of that property, there was hanging upon that possession the risk, which it assumed, that it might be compelled to return the property, because it could be compelled to do so. It had the right when it took possession, but in doing so it became liable for any amount which might be pronounced in those attachment suits, and the sheriff could look to it. The important question is this: How much damage did the plaintiff suffer by having that attachment bond and the levy of that attachment hanging over it, although it was using and disposing of its property. That is the most difficult question for you to determine. If you can determine from the testimony of the value of the property as has been stated, and all the facts and circumstances that are in the testimony, it will be for you to say and determine such damages."

"Notwithstanding the possession and use of the property, the plaintiff has asked that interest upon the value of the lumber be allowed them, the value of the lumber for the entire time be allowed them, as if they had not taken possession of it, had not used it. I instruct that the plaintiff was not bound to give a forthcoming bond and take possession of the property, but it did it voluntarily, and the question

is, what has been the damage with the hanging lien and the risk it assumed for that time."

And the defendant then and there, before the jury retired, did except to the said charge on the grounds that there was no evidence that justified the submission of such a charge to the jury, and that any damages resulting to the plaintiff from the continued existence of the lien of the attachment on the personal property after it had been relsased on forthcoming bond, was too remote, speculative and shadowy to be capable of estimation.

27th exception. And whereupon, the court, at the request of the plaintiff, gave the following instructions to the jury, the evidence pertinent thereto being contained in the foregoing statement:

"Property, the possession of which is held by virtue of a bond given in the course of a judicial proceeding, and process issued thereon, is held upon the process of the law. No change in title is effected. If the person so holding parts with its possession he
70 does it at his peril," to which charge the defendant did then and there, before the jury retired, except on the same grounds as last above.

28th exception. And thereupon, the court, at the request of the plaintiff, gave the jury the following charge, the evidence pertinent thereto being contained in the foregoing statement:

"It was not the duty of the plaintiff to give forthcoming bonds or indemnity bonds to the sheriff or the plaintiff in the attachment suit."

To the giving of which charge the defendant did then and there, before the jury retired, except, on the same grounds as last above, and because the charge was illegal.

28½ exception. And thereupon, the court, at the request of the plaintiff, gave the jury the following charge, the evidence pertinent thereto being contained in the foregoing statement:

"The giving of the forthcoming bonds did not discharge the lien of the attachment upon the property attached, and the plaintiff, after obtaining possession of the logs and lumber and timber levied on, could not sell and dispose of the same and give a good title to the purchaser, free and clear of the attachment liens without assuming any risk of the property being demanded or damages being entailed."

To which charge the defendant did, then and there, before the jury retired, except, on the same grounds as last above, and because the principle of law embodied in said charge was erroneously stated.

29th exception. And thereupon, the court, at the request of the plaintiff, gave the following instruction to the jury, the evidence pertinent thereto being contained in the foregoing statement:

"After giving the forthcoming bonds, for the personal property, to wit: logs and lumber levied upon, the plaintiff held such property as bailee for the sheriff, and was bound to deliver such property back into the sheriff's possession whenever such sheriff demanded the possession of such property for the purpose of enabling the sheriff to sell the same to satisfy any judgment the court might render in the attachment suit."

To the giving of which charge the defendant did, then and there, before the jury retired, except.

30th exception. And thereupon, the court, at the request
71 of the plaintiff, instructed the jury as follows, the evidence pertinent thereto being contained in the foregoing statement:

"If the plaintiff sold such property after giving such forthcoming bonds, in contemplation of law, the plaintiff held the proceeds of such sales in its hands, and had the legal right to hold such proceeds in its hands to pay any judgment that might thereafter be recovered against it in the suits in which the attachments were issued until such lien of the attachments ceased to exist."

To the giving of such charge the defendant did, then and there, before the jury retired, except.

31st exception. And thereupon, the court, at the request of the plaintiff, gave the jury the following charge, the evidence pertinent thereto being contained in the foregoing statement:

"The court instructs you to award damages to the plaintiff, which it sustained by reason of or in consequence of the levy of the attachments upon all of the timber and lumber and logs, and to award such damages for the entire period of time the lien of the said attachments remained and continued upon the said timber lumber and logs, considering any deduction from such damages from the fact that the forthcoming bonds or indemnity bonds were given by the plaintiff."

And the defendant did, then and there before the jury retired, except.

32nd exception. And thereupon, the court, at the request of the plaintiff, gave the jury the following charge, the evidence pertinent thereto being contained in the foregoing statement:

"It is your province and duty to determine under the evidence the length of time these attachment liens remained upon and continued operative upon the property attached."

To the giving of which charge the defendant did, then and there, before the jury retired, except.

33rd exception. And thereupon, the court instructed, on its own motion, the jury as follows, the evidence pertinent thereto being contained in the foregoing statement:

"There is a great deal of testimony in this case. I have made careful notes through the entire case, and yet there are questions of items, questions of amount, questions of computation, which it would be difficult for me to state, and I presume it would be difficult for you to carry in your minds, but there is no question of an actual amount of damages, and if you are satisfied in your
72 minds what the testimony will justify, it is not absolutely necessary for you to find a positive amount of damages; if you are satisfied that such damages and such amount have been fully proven. It is not necessary that an actual positive amount be determined by you to a mathematical certainty or nicety. You twleve gentlemen will retain in your general recollection the aggregate of the testimony in regard to about the amounts that have been testified to, and if you satisfy your minds and satisfy your con-

sciences that the testimony will justify you in finding on such a point so much as has been proven, that will be as near as the law requires." And the defendant did, then and there, before the jury retired, except to the following portion of said charge, to wit: "If you are satisfied in your minds what the testimony will justify, it is not absolutely necessary for you to find a positive amount of damages if you are satisfied that such damages and such an amount have been fully proven. It is not necessary that an actual positive amount be determined by you to a mathematical certainty, or nicety."

34th exception. And thereupon, the court at the request of the plaintiff, instructed the jury as follows:

"You will allow the plaintiff interest at eight per centum per annum upon every item of damage which you find the plaintiff sustained from the time you find such damages were sustained to the date of your verdict." And to the giving of such instruction the defendant did, then and there, before the jury retired, except.

35th exception. It was established by the testimony that on February 22nd, 1898, the plaintiff executed a mortgage on its mill plant to secure an issue of bonds to the amount of $50,000.00, and pledged the same to various creditors, including one Henry Weiler, a director of the company, to secure an indebtedness then due from the plaintiff to the amount of about $25,000.00, and that said mortgage bonds were outstanding until after June, 1899.

Whereupon, the court, at the request of the plaintiff, gave the jury the following instruction:

"The subject of indebtedness of plaintiff incurred after October 1st, 1897, and the subject of giving a mortgage upon its properties in February, 1898, is wholly immaterial in this case, and you will exclude the same from your consideration." And to the giving of such charge the defendant did, then and there, before the jury retired, except. And the jury found a verdict in said cause for the plaintiff in the sum of $10,880.

73 Whereupon, the court aforesaid, on the 8th day of February, 1900, at a term aforesaid, did render judgment in favor of the said plaintiff and against the said defendant in the sum of $10,895.05 and $— costs, as appears of record, and inasmuch as said several matters objected to, or insisted upon, and considered by the court, do not appear by the record of the findings and judgment aforesaid, the said defendant, by its attorneys, did then and there propose this, its bill of exceptions, to the said opinions and decisions of the said judge, and requested him to sign the same according to the form of the statute in such case made and provided, which is done this 15th day of March, A. D. 1900.

Signed and sealed the day and year last above written.

[SEAL.] JAMES W. LOCKE, *Judge.*

(Indorsed:) In the U. S. circuit court for the southern district of Florida. L. Bucki & Son Lumber Co. *vs.* Fidelity & Deposit Company of Maryland. No. 116, L. 35. Bill of exceptions. Filed Mar. 15, 1900. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Know all men by these presents, that the Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, as principal, and the American Bonding and Trust Company of Baltimore City, and duly licensed under the acts of Congress of August 13th, 1894, to become sole surety upon bonds, as provided in said act, as surety, are held and firmly bound unto the L. Bucki & Son Lumber Company, a corporation, under the laws of the State of New Jersey, in the sum of twelve thousand ($12,000) dollars, for the payment whereof, well and truly to be made, they bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed on the 20th day of March, A. D. 1900.

The condition of the foregoing obligation is such, that whereas, the Fidelity and Deposit Company of Maryland, the principal above named, has sued out a writ of error from judgment in the amount of $10,895.04, in the circuit court of the United States for the
74 southern district of Florida, rendered on the 8th day of February, A. D. 1900, in favor of the plaintiff, and against the defendant, upon certain causes of action set forth in the plaintiff's declaration in the above-entitled case, in the circuit court of appeals for the fifth circuit of the United States, returnable before the said court on the 2nd day of April, A. D. 1900.

Now, if the said principal shall prosecute said writ of error to effect, and in case the said judgment should be affirmed, shall pay to the said L. Bucki & Son Lumber Company the amount of said judgment and the interest thereon and all costs and just damages for delay, then this obligation shall become null and void; otherwise shall remain of full force and virtue.

FIDELITY & DEPOSIT COMPANY OF MARYLAND.
[SEAL.] THOS. A. WHELAN, *Vice-President.*
Attest: HARRY NICODEMUS, *Ass't Secretary.*
AMERICAN BONDING AND TRUST COMPANY.
[SEAL.] JAS. BOND, *President.*
Attest: SAMUEL SHRIVER, *Secretary.*

(Documentary stamps.)

Taken and approved this 20th day of March, 1900, and it — ordered that the same shall operate as a supersedeas.

JAMES W. LOCKE, *Judge.*

(Attached.)

STATE OF MARYLAND, } ss:
City of Baltimore, }

On this 20th day of February, A. D. 1900, before the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and qualified, came Thomas A. Whelan, vice-president, and Harry Nicodemus, ass't secretary, of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself, deposeth and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of the said company, and that the said corporate seal and their signature as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at the city of Baltimore, the day and year first above written.

FRED S. AXTELL,
[SEAL.] *Notary Public.*

75 STATE OF MARYLAND, } ss:
City of Baltimore, }

On this 20th day of February, A. D. 1900, before me, Howard Abrahams, the subscriber, a notary public for the State of Maryland, residing in Baltimore city, duly appointed to take proof and acknowledgment of deeds and other instruments, came James Bond, president, and Samuel H. Schriver, secretary, of the American Bonding and Trust Company of Baltimore City, to me personally known to be the individuals described in and who executed the preceding instrument, and they each duly acknowledged the execution of same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal at the city of Baltimore, the day and year first above written.

HOWARD ABRAHAMS,
[SEAL.] *Notary Public.*

(Indorsed:) Supersedeas bond. Filed Mar. 20th, 1900. E. O. Locke, clerk.

In the United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

The defendant in the above cause, The Fidelity and Deposit Company of Maryland, conceiving it is aggrieved by the judgment entered herein on the 8th day of February, 1900, by its attorney hereby applies for a writ of error from the said judgment to the United States circuit court of appeals for the fifth circuit, and a citation to the plaintiff, The L. Bucki & Son Lumber Company, and has filed herein an assignment of errors intended to be urged in said court, and the said Fidelity and Deposit Company of Maryland prays that a writ of error do issue in this cause, and a citation to the L. Bucki & Son Lumber Company; and that a transcript of the record, proceedings and papers, upon which the said judgment was entered,
76 duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit in accordance with law.

R. H. LIGGETT,
Attorney for Fidelity and Deposit Company of Maryland.

It is ordered that a writ of error as prayed for above be allowed, and also a citation to the L. Bucki & Son Lumber Company; it is further ordered that said writ of error shall operate as a supersedeas upon the defendant filing a bond with sufficient surety, to be approved by the court, in the sum of twelve thousand dollars ($12,000), conditioned that the said defendant shall prosecute said writ of error to effect, and in case the said judgment should be affirmed, shall pay to the said L. Bucki & Son Lumber Company the amount of said judgment and interest thereon, and all costs and just damages for delay.

JAMES W. LOCKE, *Judge.*

March 20th, 1900.

(Indorsed:) Defendant's application for writ of error and order allowing same. Filed Mar. 20th, 1900.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the circuit court of the United States for the fifth circuit, southern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The L. Bucki & Son Lumber Company, plaintiff, against The Fidelity and Deposit Company of Maryland, defendant, a manifest error hath happened to the great damage of the said Fidelity & Deposit Company of Maryland, as by its complaint appears. We being willing that error if any hath been, should be duly corrected and full and speedy justice done to the

parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of appeals of the U. S. fifth circuit, together with this writ, so that you may have the same at New Orleans, La., on the second day of April, 1900, in the said circuit court of appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error,
77 what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of March, in the year of our Lord 1900.

[SEAL.] EUGENE O. LOCKE,
Clerk of the U. S. Circuit Court, Southern District of Florida.

Allowed by:
JAMES W. LOCKE, *Judge.*

(Indorsed:) Copy of writ of error lodged with clerk circuit court of U. S. so. dist. of Fla. for def't in error on 20th day of March, A. D. 1900. Eugene O. Locke, clerk. Filed Mar. 20, 1900.

UNITED STATES OF AMERICA, *ss:*

To the L. Bucki & Son Lumber Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the circuit court of appeals for the fifth circuit, of the United States, to be holden at New Orleans, La., on the second day of April, 1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Florida, wherein The Fidelity and Deposit Company of Maryland, a corporation, is plaintiff in error, against you, The L. Bucki & Son Lumber Company, a corporation, defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned, entered on the 8th day of March, 1900, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of March, in the year of our Lord, nineteen hundred.

[SEAL.] JAMES W. LOCKE, *Judge.*

Service of the foregoing citation accepted this 20th day of March, A. D. 1900.

H. BISBEE,
For Defendant.

(Indorsed:) Citation. Filed March 20th, 1900. E. O. Locke, clerk.

78 (*Clerk's Certificate.*)

United States Circuit Court, Southern District of Florida.

L. BUCKI & SON LUMBER COMPANY, Plaintiff,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant.

I, Eugene O. Locke, clerk of the above-mentioned court, do hereby certify that the foregoing pages numbered from one to 119, inclusive, constitute a true copy of the record, assignment of errors and all of the proceedings in the above-entitled cause, which is of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of above court this 28 day of March, A. D. 1900, at Jacksonville, in said district.

[SEAL.] EUGENE O. LOCKE, *Clerk*,
By LOUIS STARKE, *Deputy*.

79 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1899. May 29, 1900.

(*Extract from Minutes.*)

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND
vs.
THE L. BUCKI & SON LUMBER COMPANY. } No. 926.

This cause was regularly called this day and submitted to the court after argument by Mr. R. H. Leggitt for plaintiff in error and by Mr. H. Bisbee for defendant in error.

November Term, 1900. May 28, 1901.

(*Extract from Minutes.*)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
vs.
L. BUCKI & SON LUMBER COMPANY. } 926.

This cause came on to be heard on the transcript of the record, from the circuit court of the United States for the southern district of Florida, and was argued by counsel, in conjunction with cause No. 925, L. Bucki & Son Lumber Company *vs.* Fidelity & Deposit Company of Maryland, wherein the same questions were involed, and that case having been disposed of. It is now here ordered and adjudged by this court, that the writ of error sued out in this cause be, and the same is hereby dismissed.

It is further ordered and adjudged that the plaintiff in error, The Fidelity and Deposit Company of Maryland, and the surety on the writ of error bond herein, the American Bonding & Trust Company of Baltimore City, be condemned to pay the costs of this cause

in this court, for which execution may be issued out of said circuit court.

80 In the United States Circuit Court of Appeals for the Fifth Circuit.

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
vs.
THE L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } 926.

Whereas by inadvertence there was omitted by the clerk of the circuit court of the United States for the southern district of Florida, from the transcript of the record in the above-entitled cause, a copy of the record of the judgment of the said circuit court of the United States in said cause, a certified copy whereof, under the seal of said circuit court of the United States accompanies this stipulation, it is thereupon stipulated and agreed by and between the parties to this action, that the above-mentioned certified copy of the record of the judgment of the circuit court of the United States for the southern district of Florida hereto attached, marked "A" and made a part hereof, shall become a part of the transcript of the record in this cause to be considered the same as if it had been originally incorporated in the said transcript.

(Signed) R. H. LIGGETT,
Counsel for Plaintiff in Error.

(Signed) H. BISBEE,
Counsel for Defendant in Error.

In the United States Circuit Court, Southern District of Florida.

THE L. BUCKI & SON LUMBER COMPANY
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

In accordance with the verdict of a jury herein entered, it is considered by the court, that the plaintiff The L. Bucki & Son
81 Lumber Company do have and recover from the defendant The Fidelity & Deposit Company of Maryland, the sum of ten thousand, eight hundred and eighty and $\frac{00}{100}$ dollars ($10,880.00) damages in *his* behalf incurred, and fifteen and $\frac{04}{100}$ dollars interest ($15.04) to date as well as — costs by plaintiff expended. For which let execution issue.

February 8th, 1900.

Attest: EUGENE O. LOCKE, *Clerk.*

From judgment record U. S. circuit court "A" page 153.

United States Circuit and District Courts, Southern District of Florida.

I, Eugene O. Locke, clerk of the circuit court of the United States for said district hereby certify that the foregoing document of one

page is a true copy of judgment in the case of L. Bucki & Son Lumber Company *vs.* The Fidelity & Deposit Co. of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Jacksonville, in said district this 16th day of May, A. D. 1900.

EUGENE O. LOCKE, *Clerk.*

I, James W. Locke district judge, hereby certify that Eugene O. Locke whose signature appears above is, as he represents himself to be clerk of the United States circuit and district courts of said district and his attestations as such are entitled to full faith and credit, and that the preceding attestation by him is in due form.

Witness my hand and seal at Jacksonville Florida, this 16th day of May, A. D. 1900.

JAMES W. LOCKE, *Judge.*

82 NOTE.—The opinion of the court, and petition for rehearing covers both Nos. 925 and 926, and is *in* found in the record of the first-named case.

83 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 82 pages, numbered from "*a*" to 81, inclusive, contain a true copy of the record and all proceedings had in the case of

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
vs.
THE L. BUCKI & SON LUMBER COMPANY, Defendant in Error. } 926.

as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 30th day of January, A. D. 1902.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

84 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which L. Bucki & Son Lumber Company is plaintiff in error, and Fidelity & Deposit Company of Maryland is defendant in error, No. 925, and Fidelity & Deposit Company of Maryland is plaintiff in

error, and L. Bucki & Son Lumber Company is defendant in error, No. 926, which suit was removed into the said circuit court of appeals by virtue of writs of error to the circuit court of the United States for the southern district of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do
85 hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of January, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

86 UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

In obedience to the command of the within writ, and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, Charles H. Lednum, clerk of said court as a return to and in compliance with said writ, do herewith transmit to the honorable, the Supreme Court of the United States, a true, full and perfect transcript of the records and all proceedings had in said court in the cause wherein L. Bucki & Son Lumber Company is plaintiff in error, and Fidelity & Deposit Company of Maryland is defendant in error, numbered 925, and in the cause wherein Fidelity & Deposit Company of Maryland is plaintiff in error, and L. Bucki & Son Lumber Company, is defendant in error, numbered 926, as fully and completely as the same now remains of record in my office.

Given under my hand and the seal of said United States circuit court of appeals for the fifth circuit, at the city of New Orleans, Louisiana, this 30th day of January, A. D. 1902.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] File No. 18,366. Supreme Court of the United States. No. 220. October term, 1902. The Fidelity & Deposit Co., of Maryland *vs.* The L. Bucki & Son Lumber Co. Writ of certiorari and return. Filed Feb'y 3, 1902.